

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

In Re Bard IVC Filters Products
Liability Litigation

No. CV-MD -15-02641 PHX/PCT-DGC

PROPOSED FINAL PRETRIAL ORDER

The following is the joint Proposed Final Pretrial Order to be considered at the Final Pretrial Conference set for May 4, 2018, at 10:00 a.m.

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B. STATEMENT OF JURISDICTION

1. Jurisdiction is appropriate in this Court as the parties to this action are citizens of different states and Plaintiff alleges that she has suffered damages in an amount exceeding the minimum jurisdictional limits of this Court, 28 U.S.C. § 1332.

Plaintiff¹ is a citizen of the state of Georgia. Defendant C.R. Bard, Inc. is a citizen of the state of Delaware and is a corporation duly organized and existing under the laws of the state of Delaware, with its principal place in New Jersey. Defendant Bard Peripheral Vascular, Inc. is a citizen of the state of Arizona, is a wholly owned subsidiary corporation of Defendant Bard, and is duly organized and existing under the laws of the state of Arizona with its principal place of business in Arizona.

2. Jurisdiction is not disputed.

C. STIPULATIONS AND UNCONTESTED FACTS AND LAW

1. The following material facts are admitted by the parties and require no proof:

¹ Plaintiff's spouse, Alfred Jones, was dismissed by stipulation. See Order granting Stipulation of Dismissal, April 13, 2018 (Doc. 10732).

- a. The Defendants in this case are C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (“BPV”). BPV is the wholly-owned subsidiary of C. R. Bard, Inc., the parent company. Throughout this case, including in this pretrial order, the jury instructions, and the verdict form, C.R. Bard, Inc. and BPV will be referred to collectively as “Bard” or “Defendants.”
- b. The product that is the subject of this lawsuit is a Bard Eclipse® IVC Filter (“Eclipse® filter”) that was designed, manufactured, marketed, and sold by Bard.
- c. The Eclipse® filter is conical in shape and consists of a main shaft to which twelve struts (six “arms” and six “legs”) are attached.
- d. The Eclipse® filter is constructed of a nickel-titanium alloy called Nitinol.
- e. The Eclipse® filter is a medical device that is implanted in the inferior vena cava (“IVC”), the largest vein in the human body.
- f. The United States Food and Drug Administration (“FDA”) cleared the Eclipse® filter for commercial availability through the 510(k) process outlined in the Food, Drug and Cosmetic Act.
- g. The Eclipse® Filter was cleared for commercial availability in the United States for use in patients as a permanent filter with an optional retrievable procedure on January 14, 2010.
- h. Bard marketed the Eclipse® filter for both permanent and optional placement.
- i. On August 24, 2010, a vascular surgeon, Dr. Anthony James Avino, implanted an Eclipse® IVC filter in Mrs. Jones’ IVC at Memorial Health University Medical Center (“MUMC”) in Savannah, Georgia.
- j. Mrs. Jones was properly indicated for placement of the Eclipse® filter on August 24, 2010.

- k. Dr. Avino's placement of the Eclipse filter in Mrs. Jones was appropriate and met the applicable standard of care for doctors in his position.
- l. Dr. Avino did not cause, contribute to, and was not a factor in producing any of the injuries claimed by Mrs. Jones in this lawsuit.
- m. Subsequent to implantation and after August 14, 2013, Mrs. Jones' Eclipse® filter fractured and a strut embolized in her right pulmonary artery.
- n. On April 22, 2015, a chest x-ray and CT angiogram revealed that Mrs. Jones' Eclipse filter had fractured and the fractured strut had embolized to her right pulmonary artery.
- o. On April 23, 2015, Dr. Kristin Nelson removed Mrs. Jones' Eclipse® filter through a percutaneous procedure.
- p. Dr. Nelson's actions in retrieving the Eclipse filter from Mrs. Jones IVC were appropriate and met the applicable standard of care for doctors in her position.
- q. Dr. Nelson's decision not to attempt to retrieve the Eclipse filter fragment from Mrs. Jones pulmonary artery was appropriate and met the applicable standard of care for doctors in her position.
- r. Dr. Nelson did not cause, contribute to, and was not a factor in producing any of the injuries claimed by Mrs. Jones in this lawsuit.
- s. The broken strut of the Eclipse filter remains in Mrs. Jones' right pulmonary artery.
- t. Ms. Jones has not sought or received any medical care since March 16, 2016.

2. The following material facts, although not admitted, will not be contested at trial by evidence to the contrary:

a. Plaintiff is not seeking to recover past or future lost wages as part of her damages.

3. The following issues of law are uncontested and stipulated to by the parties:

a. Plaintiff's claims and Bard's defenses are governed by Georgia substantive law.

b. The law set forth in any jury instructions stipulated to by the Parties.

D. CONTESTED ISSUES OF FACT AND LAW

1. Disputed issues of fact:

a. **Strict Liability - Design Defect:** Whether the Eclipse® filter implanted in Plaintiff had a design defect.

Plaintiff's Contention: Mrs. Jones contends that the Eclipse® filter implanted in her was defectively designed, the defect existed at the time the Eclipse® filter left Bard's control, and the design defect was a proximate cause of Mrs. Jones' damages. Mrs. Jones further contends that the risk of harm in the design of the Eclipse® filter implanted in her outweighs the utility of that particular design, and that Bard exposed Mrs. Jones to a greater risk of danger than Bard should have in using the design of the implanted filter rendering the filter defective. Mrs. Jones further contends that, due to the defective design, the Eclipse® filter implanted in her IVC tilted, migrated, and fractured after it was properly implanted; that one of the fractured struts of the Eclipse® filter is not able to be removed and remains in her pulmonary artery; and that the defective design of the Eclipse® filter implanted in Mrs. Jones caused her injury and damage. Lastly, there were numerous safer, reasonable alternative IVC filter designs available to Defendants.

Defense Contention: Bard denies that the Eclipse® filter implanted in Plaintiff was defective and unreasonably dangerous. Instead, the

Eclipse® filter was both merchantable and reasonably suited to the use intended. *See* O.C.G.A. § 51–1–11(b)(1). The utility and benefits of the Eclipse® filter design outweigh the inherent risk of harm in the product design. Further, Bard exercised reasonable care in choosing the design for the Eclipse® filter after consideration of all relevant factors, including Bard’s compliance with federal regulatory standards encompassed in the FDA 510(k) clearance process, and industry wide standards. Lastly, there was no feasible alternative design at the time Bard designed the Eclipse® filter that would have been safer and provided the same utility for optional retrieval.

- b. **Strict Liability - Design Defect - Proximate Cause:** Whether a design defect of the Eclipse® filter was a proximate cause of Plaintiff’s injuries and damages.

Plaintiff’s Contention: Mrs. Jones contends that the defective design of her Eclipse® filter caused or contributed to cause her injuries.

Defendants’ Contention: Defendants denies that any alleged design defect in the Eclipse® filter caused or contributed to Plaintiff’s injuries.

- c. **Strict Liability - Failure to Warn:** Whether Bard failed to adequately warn of the dangers arising from the use of the Eclipse® filter about which it knew or reasonably should have known.

Plaintiff’s Contention: Mrs. Jones contends that Bard’s warnings were inadequate, that those warnings were inadequate when the Eclipse® filter left Bard’s control, and that the inadequate warning was a proximate cause of her injuries. Mrs. Jones contends that Bard failed to provide adequate warnings of the Eclipse® filter’s potential dangers and that Bard failed to adequately communicate adequate warnings to Mrs. Jones’ physicians. Mrs. Jones contends that Bard

1 failed to provide an adequate warning of the Eclipse® filter's
2 unacceptable safety risks or failed to adequately communicate
3 warnings to Mrs. Jones' physicians prior to and at the time of
4 implantation and thereafter. Mrs. Jones further contends that the
5 Eclipse® filter implanted in her IVC tilted, migrated, and fractured
6 after it was properly implanted; that one of the struts embolized to
7 her right pulmonary artery and is not able to be removed and
8 remains; that no reasonable doctor would have implanted the
9 Eclipse® filter had Bard given adequate warnings; that Mrs. Jones'
10 doctors would not have implanted the Eclipse® filter in her had they
11 been adequately warned about the Eclipse® filter's unacceptable
12 safety risks and/or would have intervened after implantation of the
13 filter; and, Bard's failure to warn about the safety risks of the
14 Eclipse® filter and/or failure to adequately communicate those risks
15 to her doctors resulted in injury and damage to Mrs. Jones. In
16 addition, Mrs. Jones contends that Bard's duty to warn is a
17 continuing one, including the duty to warn both her and her
18 physicians, and the duty to warn continued after the date of the first
19 sale of the Eclipse® filter and after implantation of the Eclipse®
20 filter in Mrs. Jones. Lastly, Mrs. Jones contends Bard failed to meet
21 its continuing duty to provide adequate warnings and/or adequately
22 communicate those warnings to Mrs. Jones and her physicians.

23 Defendants' Contention: Defendants contend that their duty was to
24 provide a warning to Dr. Avino, the implanting physician. The
25 warning provided to Dr. Avino was adequate. The warnings
26 contained in the Eclipse® filter IFU were legally adequate because
27 they included the precise risks that Plaintiff experienced here.
28 Further, any failure to warn Dr. Avino was not the proximate cause

of Plaintiff's injuries because Dr. Avino was aware of these risks when he implanted the Eclipse® filter in Plaintiff, and there is insufficient evidence that he would have changed his prescribing decision had Bard provided the additional warnings that Plaintiff contends he should have been given (i.e., that risks associated with Bard's IVC filters were higher than those of competitor devices or the SNF).

- d. **Strict Liability – Failure to Warn – Proximate Cause:** Whether any alleged defect in the warning was a proximate cause of Plaintiff's alleged injuries and damages.

Plaintiff's Contention: Mrs. Jones contends that Bard's failure to adequately warn of the dangers arising from its Eclipse® filter of which Bard knew or reasonably should have known, and/or Bard's failure to adequately communicate those dangers to Plaintiff's doctors, caused or contributed to cause her injuries. Additionally, Mrs. Jones contends the Dr. Avino read and was aware of the warnings in the IFU and that Defendants' duty to warn extends beyond the IFU and includes other means of communication through which it failed to provide adequate warnings, that evidence will be established at trial.

Defendants' Contention: Bard denies that any alleged defect in the Eclipse® filter or the warning provided caused or contributed to Plaintiff's injuries. There is no evidence that Dr. Avino read the IFU for the filter at issue. Further any failure to warn Dr. Avino was not the proximate cause of Plaintiff's injuries because Dr. Avino was aware of these risks when he implanted the Eclipse® filter in Plaintiff, and there is insufficient evidence that he would have changed his prescribing decision had Bard provided the additional

warnings that Plaintiff contends he should have been given (i.e., that risks associated with Bard's IVC filters were higher than those of competitor devices or the SNF).

- e. **Negligent Design** – Whether Bard was negligent in the design and development of the Eclipse® filter.

Plaintiff's Contention: Mrs. Jones contends that Bard owed her a duty of reasonable care in the design, development, and testing of the Eclipse® filter, including its predicate devices (the Recovery, G2, G2 Express/G2X filters), Bard breached that duty of care, Bard's breach was a proximate cause of her injuries, and she suffered damages.

Mrs. Jones contends that Bard failed to use that degree of care which is used by ordinary careful persons under the same or similar circumstances in the design and/or testing of the Eclipse® filter that was implanted in her, as well as in warning of the dangers associated with that filter and/or in communicating adequate warnings regarding that filter. Mrs. Jones further contends that, due to the defective design, development, and testing, the Eclipse® filter implanted in her IVC tilted, migrated, and fractured after it was properly implanted; that a fractured strut of the Eclipse® filter is not able to be removed and remains in her pulmonary artery; and that Defendants' negligence in the design, development, and/or testing of its filter was a cause of her injury and damage. There were numerous safer, reasonable alternative IVC filter designs available to Defendants. Lastly, improper testing of the filter is evidence of Bard's failure to act reasonably and use the proper degree of care, as well as its breach of the duty of care.

Defendants' Contention: Defendants deny they were negligent in the design of the filter or the warning provided. Under Georgia law, a

jury is to consider the same risk benefit factors for design defect in determining whether there was negligence in the design. Bard denies that the Eclipse® filter implanted in Plaintiff was defective and unreasonably dangerous. The utility and benefits of the Eclipse® filter design outweigh the inherent risk of harm in the product design. Further, Bard exercised reasonable care in choosing the design for the Eclipse® filter after consideration of all relevant factors, including Bard's compliance with federal regulatory standards encompassed in the 510(k) clearance process, and industry wide standards. Lastly, there was no feasible alternative design at the time Bard designed the Eclipse® filter that would have been safer and provided the same utility for optional retrieval. There is no claim for "negligent testing" alleged in Plaintiff's Complaint or recognized under Georgia law.

- f. **Negligent Design – Causation:** Whether a design defect of the Eclipse® filter was a proximate cause of Plaintiff's injuries and damages.

Plaintiff's Contention: Mrs. Jones contends that Bard's negligence caused or contributed to cause her injuries and damages.

Defendants' Contention: Bard denies that any alleged design defect in the Eclipse® filter caused or contributed to Plaintiff's injuries.

- g. **Negligent Failure to Warn:** Whether Bard was negligent in the warning provided to Mrs. Jones' doctors about the risks of the Eclipse® filter.

Plaintiff's Contention: Mrs. Jones contends that Bard owed her a duty of reasonable care to provide adequate and appropriate warnings as to the complications and dangers of the Eclipse® filter, Bard breached that duty of care, Bard's breach was a proximate cause of her injuries, and she suffered damages. Mrs. Jones contends that Bard

1 failed to use that degree of care which is used by ordinary careful
2 persons under the same or similar circumstances in providing
3 adequate warnings and in communicating adequate warnings
4 regarding the Eclipse® filter. Mrs. Jones further contends that the
5 Eclipse® filter implanted in her IVC tilted, migrated, and fractured
6 after it was properly implanted; that a fractured strut of the Eclipse®
7 filter is not able to be removed and remains in her pulmonary artery;
8 that Mrs. Jones' doctors would not have implanted the Eclipse® filter
9 in her had they been adequately warned about the Eclipse® filter's
10 safety risks and/or would have intervened after implantation of the
11 filter; and that Defendants' negligence in the design and/or testing of
12 its filter, and negligent failure to adequately warn of the dangers
13 associated with that filter and/or communicate that warning to her
14 doctors, caused her injury and damage. Additionally, Mrs. Jones
15 contends Bard failed to meet its continuing duty to provide adequate
16 warnings and/or adequately communicate those warnings to Mrs.
17 Jones and her doctors. Lastly, Mrs. Jones contends Dr. Avino read
18 and was aware of the warnings in the IFU and that Defendants' duty
19 to warn extends beyond the IFU and includes other means of
20 communication through which it failed to provide adequate warnings,
21 that evidence will be established at trial.

22 Defendants' Contention: Bard denies that it was negligent. Bard
23 acted reasonably in all manners concerning the warnings of the
24 Eclipse® filter. The warnings contained in the Eclipse® filter IFU
25 were legally adequate because they included the precise risks that
26 Plaintiff experienced here: filter fracture, movement, migration,
27 embolization, and perforation. Dr. Avino, as well as the entire
28 medical community, was aware of these risks associated with all IVC

filters when he implanted the Eclipse® filter in Plaintiff. Bard was not required to warn of complication rates of the Eclipse® filter compared to other products on the market, and to do so would not be feasible.

- h. **Negligent Failure to Warn – Causation:** Whether any alleged negligence in providing warnings regarding the Eclipse® filter was a proximate cause of Plaintiff’s alleged injuries and damages.

Plaintiff’s Contention: Mrs. Jones contends that Bard’s negligence caused or contributed to cause her injuries and damages.

Additionally, Mrs. Jones contends Dr. Avino read and was aware of the warnings in the IFU and that Defendants’ duty to warn extends beyond the IFU and includes other means of communication through which it failed to provide adequate warnings, that evidence will be established at trial.

Defendants’ Contention: Bard contends that it provided legally adequate warnings concerning the Eclipse® filter, particularly in light of the state of the art during the relevant time period. The warnings contained in the Eclipse® filter IFU were adequate because they included the precise risks that Plaintiff experienced here: filter fracture, movement, migration, embolization, and perforation. Dr. Avino was aware of these risks associated with all IVC filters when he implanted the Eclipse® filter in Plaintiff. Bard was not required to warn of complication rates of the Eclipse® filter compared to other products on the market, and to do so would not be feasible.

- i. **Compensatory Damages** – Whether Plaintiff is entitled to damages and, if so, the amount of the damages.

Plaintiff’s Contention: Mrs. Jones contends she sustained injuries and damages and is entitled to a damage award for the following: medical

1 expenses, such as hospital, doctor, and medicine bills both in the past
2 and in the future; mental and physical pain and suffering in the past,
3 present, and future; and, impairment of bodily or physical faculties in
4 the past, present, and future.

5 Defendants' Contention: Bard contends that no doctor has
6 specifically attributed any of the symptoms that Plaintiff has
7 allegedly experienced to the strut that remains embolized in her
8 pulmonary artery.

9 j. **Punitive Damages** - Whether Plaintiff is entitled to an award of
10 punitive damages and, if so, the amount of the award.

11 Plaintiff's Contention: Mrs. Jones contends that there is clear and
12 convincing evidence of Bard's willful misconduct, malice, fraud,
13 wantonness, oppression, and/or that its entire want of care raises the
14 presumption of a conscious indifference to the consequences of its
15 actions, which entitles her to an award of punitive damages. She is
16 entitled to an award of punitive damages not as compensation, but in
17 a proper amount necessary to punish, penalize or deter Defendants
18 and others in light of the circumstances of the case.

19 Bard's argument with respect to O.C.G.A. § 51-12-5.1(e) is meritless.
20 First, although the Eclipse® has the same relevant design
21 characteristics as the G2 IVC filter and Bard's G2 Express and G2X
22 IVC filters, Bard made changes to the filter in an effort to market and
23 sell it as a separate device; in doing so, it obtained separate FDA
24 approval and then represented to the FDA that this was a new and
25 different filter. It is legally a separate device because Bard marketed
26 and sold it as a separate device; it is also not identical to the G2.
27 Second, part of Plaintiff's punitive damage claim in this case is the
28 very deception that Bard created in the name change and marketing

1 of the Eclipse to deceive the medical community and to avoid the
2 “baggage” of the prior devices, including the G2. Thus, it is
3 precisely that Bard misled the market by offering a “new” device that
4 gives rise to punitive damages in this case. Moreover, based on the
5 differences between the Eclipse and the G2, Bard has argued in this
6 case that evidence this Court found relevant and admissible as to the
7 G2 in the *Booker* case is irrelevant and/or inadmissible in this case.
8 Because the Court granted Bard’s motion, Bard is judicially estopped
9 from contending the Eclipse is the same device as the G2.
10 Further, the limitation of punitive damage awards under O.C.G.A. §
11 51-12-5.1(e)(1) does not apply to awards of punitive damages
12 recovered in this Court.

13 Finally, even if Bard’s analysis were accepted by the Court, the
14 *Booker* verdict is not final given Bard’s post-trial motions and
15 presumably appeal. In the absence of a final award, O.C.G.A. § 51-
16 12-5.1(e)(1) cannot be used to bar punitive damages claims in post-
17 *Booker* cases.

18 Defendants’ Contention: Bard denies that Plaintiff is entitled to
19 punitive damages. Punitive damages are not warranted because there
20 is no evidence Bard acted with the requisite state of mind in the
21 design of the Eclipse® filter or in the warnings provided, and Bard
22 otherwise complied with all applicable FDA regulations, which tends
23 to show that there is no clear and convincing evidence of the requisite
24 state of mind necessary to support an award of punitive damages.
25 Bard also contends that pursuant to O.C.G.A. § 51-12-5.1(e), the jury’s
26 award of punitive damages in the *Booker* case bars an award of
27 punitive damages in this matter.
28

O.C.G.A. § 51-12-5.1(e)(1) states that “[i]n a tort case in which the cause of action arises from product liability, there shall be no limitation regarding the amount which may be awarded as punitive damages. Only one award of punitive damages may be recovered in a court in this state from a defendant for any act or omission if the cause of action arises from product liability, regardless of the number of causes of action which may arise from such act or omission.”

In various pre-trial filings, Plaintiff has made it clear that she will argue to the jury that her Eclipse filter and the G2 filter at issue in the *Booker* case have the same design, that the Eclipse filter suffered from the same design and warning defects as the G2 Filter, and that the “core design problems” with both filters derived from the problematic design of the Recovery filter. *See* doc. 10707. Accordingly, Bard anticipates that Plaintiff will attempt to ask a jury for a second award of punitive damages from Bard for the same acts or omissions for which the *Booker* jury already awarded punitive damages. Under this scenario, Georgia law prohibits an award of punitive damages in the *Jones* case, and Bard should be entitled to judgment in its favor as a matter of law and dismissal of Plaintiff’s punitive damages claim.

2. Disputed issues of law:

a. Plaintiff’s proposed issues of law

The following are issues of law proposed by Plaintiff to which Bard does not agree:

i. Strict Liability (General Aspects)

To recover, the person injured by an allegedly defective product must establish that (a) the product was defective, (b) the defect existed at the time the product left the manufacturer’s control, and (c) the defect in the product was a proximate cause of the person’s injury. *See* O.C.G.A § 51-1-11; *Banks v. ICI Americas, Inc.*, 450 S.E.2d 671 (Ga. 1994); *SK Hand Tool Corp. v. Lowman*, 479 S.E.2d 103 (1996) (en banc); Council of

1 Superior Court Judges' Suggested Pattern Civil Jury Instructions, 62.610.

2 The manufacturer of a new product that is defective at the time it leaves the hands
3 of the manufacturer and which proximately causes injury to a natural person is strictly
4 liable for the defect and has the burden of loss shifted to it when loss is caused by the
5 defect. O.C.G.A. §51-1-11(b); *Ellis v. Rich's, Inc.*, 212 S.E.2d 373 (Ga. 1975); *Orkin*
6 *Exterminating Co., Inc. v. Dawn Food Products*, 366 S.E.2d 792 (Ga. App. 1988).

7 ii. Failure to Warn (Negligent and Strict Liability):

8 To establish a failure to warn claim under Georgia law, "the plaintiff must show
9 the defendant had a duty to warn, the defendant breached that duty and the breach was the
10 proximate cause of the plaintiff's injury." *Wheat v. Sofamor, S.N.C.*, 46 F. Supp. 2d
11 1351, 1362 (N.D. Ga. 1999).

12 "[A] manufacturer has a duty to warn of nonobvious foreseeable dangers from the
13 normal use of its product." *Thornton v. E.I Du Pont de Nemours & Co.*, 22 F.3d 284, 289
14 (11th Cir. 1994) (citations omitted).

15 The duty to warn arises "whenever the manufacturer knows or reasonably should
16 know of the danger arising from the use of its product." *Chrysler Corp. v. Batten*, 450
17 S.E.2d 208, 211 (Ga. 1994).

18 Under Georgia Law, the duty to warn is "breached by (1) failing to adequately
19 communicate the warning to the ultimate user or (2) failing to provide an adequate
20 warning of the product's potential risks." *Thornton*, 22 F.3d at 289.

21 In cases involving medical devices, Georgia applies the "learned intermediary"
22 doctrine. Under this doctrine, the manufacturer has no "duty to warn the patient of the
23 dangers involved with the product, but instead has a duty to warn the patient's doctor,
24 who acts as a learned intermediary between the patient and manufacturer." *McCombs v.*
25 *Synthes (U.S.A.)*, 587 S.E.2d 594, 595 (Ga. 2003) (citing *Ellis v. C. R. Bard, Inc.*, 311
26 F.3d 1272, 1279-80 (11th Cir. 2002)). The manufacturer's warnings to the physician,
27 however, "must be adequate or reasonable under the circumstances of the case." *Id.*
28

1 The duty to warn is a continuing one and may arise “months, years, or even
2 decades after the date of the first sale of the product.” *Watkins v. Ford Motor Co.*, 190
3 F.3d 1213, 1218 (11th Cir. 1999).

4 The general rule in Georgia is that the adequacy of a warning is an issue for the
5 jury. *Thornton*, 22 F.3d at 289.

6 The “question that must be answered by the fact finder is whether the warning
7 given was sufficient or was inadequate because it did not ‘provide a complete disclosure
8 of the existence and extent of the risk involved.’” *Watkins*, 190 F.3d at 1220 (quoting
9 *Thornton*, 22 F.3d at 289); *see Cason v. C. R. Bard, Inc.*, 2015 WL 9913809 at *4-5 (N.D.
10 Ga. Feb. 9, 2015); *Cisson v. C. R. Bard, Inc.*, 2013 WL 5700513 at *7-8 (S.D. W. Va. Oct.
11 18, 2003).

12 iii. Design Defect (Negligent and Strict Liability):

13 Under Georgia law, negligent or defective design is generally a jury question. *See*
14 *Davis v. Glaze*, 354 S.E.2d 845 (Ga. 1987); *Smokey Mountain Enterprises, Inc. v. Bennett*,
15 359 S.E.2d 366 (Ga. App. 1987).

16 Under Georgia law, ordinary negligence means the absence of or the failure to use
17 that degree of care that is used by ordinarily careful persons under the same or similar
18 circumstances. For a plaintiff to recover damages from a defendant in such a case, there
19 must be injury to the plaintiff resulting from the defendant’s negligence. *See* O.C.G.A. §
20 51-1-2; Council of Superior Court Judges’ Suggested Pattern Civil Jury Instructions,
21 60.010.

22 Georgia uses a “risk-utility” test for product liability claims. *Banks*, 450 S.E.2d at
23 674.

24 “A product may be found defective because of its particular design. Although a
25 manufacturer is not required to ensure that a product design is incapable of producing
26 injury, the manufacturer has a duty to exercise reasonable care in choosing the design for
27 a product.” Council of Superior Court Judges’ Suggested Pattern Civil Jury Instructions,
28 62.640.

1 To determine whether a product suffers from a design defect, there must be a
2 balancing of the inherent risk of harm in a product design against the utility or benefits of
3 that product design. There must be a determination whether the manufacturer acted
4 reasonably in choosing a particular product design by considering all relevant evidence,
5 including, but not limited to, the following factors:

- 6 • the usefulness of the product;
- 7 • the severity of the danger posed by the design;
- 8 • the likelihood of that danger;
- 9 • the avoidability of the danger, considering the user's knowledge of the product,
10 publicity surrounding the danger, the effectiveness of warnings, and common
11 knowledge or the expectation of danger;
- 12 • the user's ability to avoid the danger;
- 13 • technology available when the product was manufactured;
- 14 • the ability to eliminate danger without impairing the usefulness of the product or
15 making it too expensive;
- 16 • the feasibility of spreading any increased cost through product's price or by
17 purchasing insurance;
- 18 • the appearance and aesthetic attractiveness of the product;
- 19 • the product's utility for multiple uses;
- 20 • the convenience and durability of the product;
- 21 • alternative designs for the product available to the manufacturer;
- 22 • and the manufacturer's compliance with the industry standards and government
23 regulations.

24 *Banks*, 450 S.E.2d at 675 n.6, Council of Superior Court Judges' Suggested Pattern Civil
25 Jury Instructions, 62.650.

26 In determining whether a product was defective, the jury may consider evidence of
27 alternative designs that would have made the product safer and could have prevented or
28 minimized the plaintiff's injury. In determining the reasonableness of the manufacturer's

1 choice of product design, the jury should consider 1) the availability of an alternative
2 design at the time the manufacturer designed this product; 2) the level of safety from an
3 alternative design compared to the actual design; 3) the feasibility of an alternative design,
4 considering the market and technology at the time the product was designed; 4) the
5 economic feasibility of an alternative design; 5) the effect an alternative design would
6 have on the product's appearance and utility for multiple purposes; and 6) any adverse
7 effects on the manufacturer or the product from using an alternative design. Council of
8 Superior Court Judges' Suggested Pattern Civil Jury Instructions, 62.660.

9 In determining whether a product was defective, the jury may consider proof of a
10 manufacturer's compliance with federal or state safety standards or regulations and
11 industrywide customs, practices, or design standards. Compliance with such standards or
12 regulations is a factor to consider in deciding whether the product design selected was
13 reasonable considering the feasible choices of which the manufacturer knew or should
14 have known. However, a product may comply with such standards or regulations and still
15 contain a design defect. Council of Superior Court Judges' Suggested Pattern Civil Jury
16 Instructions, 62.670.

17 iv. Punitive Damages:

18 Under Georgia law, punitive damages may be awarded where "it is shown by clear
19 and convincing evidence that the defendant's actions showed willful misconduct, malice,
20 fraud, wantonness, oppression, or that entire want of care which would raise the
21 presumption of conscious indifference to consequences." Ga. Code Ann. § 51-12-5.1(b).

22 Under the conscious indifference standard, "punitive damages are available where
23 a manufacturer knows that its product is potentially dangerous and chooses to do nothing
24 to make it safer or to warn consumers." *Cisson*, 2013 WL 5700513, at *13 (citations
25 omitted).

26 "[P]unitive damages are available where a manufacturer knows that its product is
27 dangerous and chooses to do nothing to make it safer or to warn consumers." [Court's
28 Order, dated Nov. 22, 2017, (Dkt. 8874), at 19.]

Punitive damages are awarded not as compensation to a plaintiff but solely to punish, penalize or deter a defendant. *See* O.C.G.A. § 51-12-5.1(b),(c); Council of Superior Court Judges' Suggested Pattern Civil Jury Instructions, 66.700, 66.702.

b. Defendants' proposed issues of law

The following are issues of law proposed by Bard to which Plaintiff does not agree:

1. The "learned intermediary" doctrine applies to this case.

2. As to Plaintiff's statement of law in Section 2.a. above, Bard agrees that Georgia law applies to Plaintiff's claims, but does not agree that all of the citations listed by Plaintiff are undisputed or applicable to the facts of this case. The parties have stipulated to many jury charges and have submitted others with objections, included some cited by Plaintiff herein.

3. Whether Defendants can offer evidence at trial that the FDA never instituted any enforcement or suggested a recall related to the Eclipse® filter (or any other Bard filter).

Plaintiff's Contention: Plaintiff contends this evidence is speculative, misleading, and highly prejudicial without probative value, as it would allow Bard to improperly insinuate that the lack of such action by the FDA is evidence of the safety and efficacy of the filters, and the reasonableness of Bard's conduct. Moreover, the knowledge, motivations, intent, state of mind, and purposes of the FDA or FDA officials are inadmissible. *See, e.g., In re Fosamax Prod. Liab. Litig.*, 645 F. Supp. 2d 164, 192 (S.D.N.Y. 2009). Any suggestion or argument based on why the FDA did not take enforcement action against Bard relative to its IVC filters would impermissibly invite the jury to speculate as to what the FDA intended or what the agency or its employees were thinking or of which they were aware. Moreover, it is false and misleading to elicit testimony from its witnesses as Bard during the *Booker* trial that Bard never received a warning letter addressing the design of its filters or regarding the warnings it

1 provided related to its filters. *See, Booker* Trial Transcript, March 28,
2 2018 at 2311:1-11. In fact, the warning letter is not part of the 510(k)
3 process and as enforcement actions regarding post-market matters, it
4 is misleading and actually false to insinuate that the same FDA
5 department overseeing the 510(k) process and issuing clearance
6 letters regarding substantial equivalence is the same as the
7 department that handles post-market matters.

8 Defendants' Contention: Under Georgia law, when a plaintiff claims
9 a design defect in a widely-distributed product, "[t]he fact that . . .
10 [defendant] had never been subjected to regulatory action with
11 respect to the claimed defect . . . tends to negate the allegation that
12 the configuration was a dangerous design." *Browning v. Paccar,*
13 *Inc.*, 214 Ga. App. 496, 498, 448 S.E.2d 260, 263 (1994). As such,
14 "evidence that the customary methods for protecting the public from
15 defective [products] had not been instituted in connection with these
16 [products] was relevant to show defendant's design and manufacture
17 was not negligent." *Id.*

18 Second, with respect to Plaintiff's failure to warn claim, FDA
19 inaction is relevant and admissible to show that a particular risk or
20 risks were "known or reasonably scientifically knowable." *Carlin v.*
21 *Superior Court*, 13 Cal. 4th 1104, 1114 (1996) ("In appropriate cases,
22 FDA action or inaction, though not dispositive, may be admissible . .
23 . to show whether a risk was known or reasonably scientifically
24 knowable" for purposes of assessing a failure to warn claim); *In re*
25 *Guidant Corp. Implantable Defibrillators Prod. Liab. Litig.*, No.
26 *MDL 05 1708 DWF/AJB*, 2007 WL 2023569, at *3 (D. Minn. July 6,
27 2007) (citing *Carlin* and reserving ruling). That the FDA did not
28 institute enforcement action necessitating such a result is relevant to

the reasonableness of Bard's actions in continuing to market the Eclipse® filter as of the time Plaintiff received her implant, and to show that Bard's conduct did not meet requisite "willful misconduct, malice, fraud, wantonness, oppression, or ... conscious indifference" standard for Plaintiff's punitive damages claim. See Ga. Code Ann. § 51-12-5.1(b).

Third, as this Court has already suggested, Doc. 9881 at 8, evidence that the FDA did not take enforcement action against Bard is relevant and admissible as rebuttal evidence in the event that Plaintiffs attempt to use FDA-related evidence (such as the FDA warning letter) in an attempt to show wrongdoing by Defendants. See generally *Broyles v. Cantor Fitzgerald & Co*, No. CV 10-854-JJB-CBW, 2016 WL 4718150, at *2 (M.D. La. Sept. 8, 2016) ("[T]he Court cautions that if CA Funds "opens the door" by putting the S.E.C. investigation at issue to prove Commonwealth's underlying wrongdoing . . . and Stifel Financial's alleged knowledge of liability to CA Funds, then the scope and outcome of the S.E.C. investigation shall be deemed to be fair game and admissible."). Moreover, because the FDA has the power to initiate enforcement actions for violation of FDA regulations, the lack of such an enforcement action is relevant to rebut any allegation or insinuation by Plaintiff that Bard violated any FDA regulation.

E. LIST OF WITNESSES

1. Each party understands that it is responsible for ensuring that the witnesses it wishes to call to testify are subpoenaed. Each party further understands that any witness a party wishes to call shall be listed on that party's list of witnesses; the party cannot rely on the witness having been listed or subpoenaed by another party. Plaintiff has submitted to Bard's counsel a list of Bard employees and officers that

1 she may call at trial and requested that Bard's counsel determine whether counsel
2 can accept service for those witnesses and whether such witnesses may be
3 unavailable for trial. The parties are working cooperatively to facilitate the
4 subpoena and attendance of witnesses.

5 2. Many of the parties' summaries state that the witness will testify consistent
6 with his/her deposition. The parties do not waive any objections, and these
7 descriptions are subject to the prior rulings by the Court on motions in limine and
8 the pending motions in limine. Counsel agrees that they and the witnesses will
9 abide by those rulings.

10 3. The parties agree to provide 48-hours notice of witness they intend to call.
11 Bard renews its request made at the April 13, 2018 (which the Court indicated
12 would be appropriate) that Plaintiff identify which of the almost 20 subpoenaed
13 witnesses she actually intends to call and approximately when each of those
14 witnesses will need to appear. *See* Dkt. 10768.

15 4. Defendants object to Dr. Krishna Kandarpa who is listed by Plaintiff as a
16 "will call" witness. As with the Booker case in which he was excluded, Plaintiff
17 did not disclose him as a fact witness until March 29, 2018 in response to a specific
18 interrogatory that was served over a year earlier asking for the identity of witnesses
19 and the subject matter of their expected testimony. This was months after
20 discovery was closed in 2017, and Bard has not has the opportunity to depose him.
21 Plaintiff response: Plaintiff disclosed Dr. Kandarpa as a witness in supplemental
22 interrogatory responses; even if Plaintiff had identified Dr. Kandarpa as a witness
23 in her original responses, Bard would not have been able to depose Dr. Kandarpa
24 during the discovery period because (a) that witness was outside the scope of
25 permitted bellwether discovery and (b) Defendants' served their interrogatories
26 such that the answers were not due until the very end of the bellwether discovery
27 period such that they could not have timely deposed Dr. Kandarpa in any event.
28 Regardless, Plaintiff should be allowed to call Dr. Kandarpa to provide necessary

1 foundation for records related to his role as medical monitor for the Everest trial.

2 5. Defendants object to the use of the deposition of Medhi Syed, who Plaintiff
 3 also lists as a “will call” witness if the jury decides to award punitive damages.
 4 Plaintiff has not submitted her deposition designation to Defendants or the Court
 5 for review. In Booker, Defendants provided their objections to designations to
 6 Plaintiff, but Plaintiff did not submit them to the Court. Plaintiff’s response:
 7 Plaintiff provided Defendants with all designations for Mr. Syed during the Booker
 8 trial. Plaintiff has not added any designations for this trial. If Defendants believe
 9 this Court needed to rule on objections, Defendants should have submitted those
 10 objections in accordance with the schedule for deposition designations in this case.

11 6. **Plaintiff’s Witnesses:**

12 a. Witnesses Plaintiff intends to call at trial (live and/or by deposition)

13 **Fact Witnesses:**

14 Doris Jones
 15 c/o Gallagher & Kennedy
 2575 E. Camelback Road, 11th Floor
 16 Phoenix, Arizona 85016

17 Doris Jones is the Plaintiff in this action. She will testify regarding her medical care and
 18 treatment, as well as he surrounding and related circumstances; the nature, extent, and
 19 severity of her injuries and suffering; the physical and mental pain, suffering and
 20 discomfort associated with the injuries; and the impact of the injuries on her life,
 21 including without limitation the ongoing emotional and physical impact on her life.
 22 Lastly, she will testify consistent with her deposition given in this matter.

23 Sharese May
 c/o Gallagher & Kennedy
 2575 E. Camelback Road, 11th Floor
 24 Phoenix, Arizona 85016

25 Sharese May is Plaintiff’s daughter. She has knowledge and is expected to testify
 26 regarding Plaintiff’s medical condition leading up to implantation of the Eclipse IVC
 27 filter, her conditions and symptoms following implantation of the filter, her medical
 28 conditions and symptoms that led her to go to the Emergency Room on April 22, 2015,

1 the procedure to remove her filter, her condition after retrieval of the filter, and her pain,
2 suffering, emotional distress, and mental anguish as a result of the filter's failure. She will
3 also testify about her mother's role in providing daycare for her children while she works
4 and her mother's fears concerning the embedded fragment in the pulmonary artery and
5 how that would impact her responsibilities for the children.

6 Shanice Matthew
7 c/o Gallagher & Kennedy
2575 E. Camelback Road, 11th Floor
Phoenix, Arizona 85016

8 Shanice Matthew is Plaintiff's daughter. She has knowledge and is expected to testify
9 regarding Plaintiff's medical condition leading up to implantation of the Eclipse IVC
10 filter, her conditions and symptoms following implantation of the filter, her medical
11 conditions and symptoms that led her to go to the Emergency Room on April 22, 2015,
12 the procedure to remove her filter, her condition after retrieval of the filter, and her pain,
13 suffering, emotional distress, and mental anguish as a result of the filter's failure.

14 Anthony Avino, M.D.
15 Savannah Vascular Institute
4750 Waters Avenue, Suite 500
16 Savannah, Georgia 31404

17 Dr. Avino is an Interventional Radiologist at Memorial Health University Medical Center
18 in Savannah, Georgia. He was the implanting physician of the Eclipse filter in Plaintiff on
19 August 24, 2010. Plaintiff expects that his testimony at trial will be consistent with the
20 testimony at his deposition taken on March 23, 2017, in this MDL.

21 Kirsten Nelson, M.D.
22 Savannah Vascular Institute
4750 Waters Avenue, Suite 500
Savannah, Georgia 31404

23 Dr. Nelson is an Interventional Radiologist at Memorial Health University Medical Center
24 in Savannah, Georgia. She was the doctor who retrieved the body of the broken Eclipse
25 filter from Plaintiff's IVC on April 23, 2015. Plaintiff expects that her testimony at trial
26 will be consistent with the testimony at her deposition taken on March 23, 2017, in this
27 MDL.

28 David Chodos, M.D.

1 Wake Forest University Baptist Medical Center
2 Medical Center Blvd
3 Winston-Salem, NC 27157

4 Dr. Chodos was a physician at Memorial Health University Medical Center in
5 Savannah, Georgia, at the time of Plaintiff's admission to the Emergency Room at the
6 hospital on April 22, 2015. He was Plaintiff's treating physician for that admission. He
7 has knowledge and Plaintiff expects that he will testify regarding Plaintiff's admission to
8 the Emergency Room, her medical condition at the time, the discovery that her Eclipse
9 filter had broken and that a piece had migrated to her right pulmonary artery, the decision
10 to remove the broken filter and not to attempt to retrieve the broken piece, the decision to
11 refer Plaintiff to an interventional radiologist for removal, and Plaintiff's care and
12 treatment during her stay at Memorial Health University Medical Center from April 22 to
13 24, 2015.

14 William Altonaga, M.D.
15 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

16 Dr. Altonaga was a consultant to and acting Medical Director for C.R. Bard beginning in
17 2001 and into 2004. Plaintiff expects that he is knowledgeable regarding the matters that
18 were the subject of his employment with Bard and his deposition taken on October 22,
19 2013, in *Giordano v. C.R. Bard, Inc., et al.*, Superior Court of California, San Diego
20 County, East County Regional Center, Case No. 00069363-CU-PO-EC.

21 Murray R. Asch, M.D.
22 c/o Lakeridge Health Corporation
23 Director of Interventional Radiology
24 580 Harwood Ave. S
25 Oshawa, ON L1S 2J4

26 Dr. Asch is an Interventional Radiologist who was involved in a pilot study to assess the
27 retrievability of the Recovery filter. Plaintiff expects that he is knowledgeable regarding
28 the matters that were the subject of his study and work with Bard, as well as his
depositions taken on May 2, 2016, in *In re Bard IVC Filters Prod. Liab. Litig.*, MDL No.
2641, United States District Court, District of Arizona ("the Bard IVC Filter MDL") and
January 5, 2011, in *Lindsay, et al. v. C.R. Bard, Inc., et al.*, United States District Court,
Southern District of New York, Case No. 1:09-cv-05475-SHS.

1 Brett Baird
2 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

3 Mr. Baird was a Senior Product Manager for BPV in 2007 and a Marketing
4 Manager for BPV from 2008 through 2011. Plaintiff expects that he is knowledgeable
5 regarding the matters that were the subject of his employment with Bard and his
6 deposition taken on June 9, 2016, in the Bard IVC Filter MDL.

7 Robert M. Carr, Jr.
8 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

9 Mr. Carr has been an employee at BPV since 2002; prior to that, he was an employee at
10 NMT working on filters. At BPV, he was the Program Director for Research &
11 Development from 2002 through 2010, Director Research & Development Biopsy from
12 2010 through 2012, Senior Director Research & Development Biopsy & Imaging from
13 2013 through 2014, and Vice President International since 2015. Plaintiff expects that he
14 is knowledgeable regarding the matters that were the subject of his employment with
15 NMT and Bard and his depositions taken on March 18, 2016, and January 19, 2017, in the
16 Bard IVC Filter MDL; May 8, 2007, in *Hutson v. C.R. Bard, Inc., et al.*, Commonwealth
17 of Kentucky, McCracken Circuit Court, Division II, Case No. 06-CI-680; March 4, 2010,
18 in *Campbell v. C.R. Bard, Inc.*, Commonwealth of Kentucky, Scott Circuit Court,
19 Division I, Case No. 08-CI-00541; September 23, 2010, in *Vedas v. C.R. Bard, Inc., et al.*,
20 Superior Court of Arizona, Maricopa County, Case No. CV2010-019655; September 14,
21 2012, in *Albrecht, et al. v. Bard Peripheral Vascular, Inc.*, Circuit Court of Greene
22 County, Missouri, Case. No. 1031-cv10504; April 17, 2013, in *Bouldry, et al. v. C.R.*
23 *Bard, Inc., et al.*, United States District Court, Southern District of Florida, Case No. 12-
24 809-51-CIV-Rosenbaum; October 25, 2013, in *Anderson v. C.R. Bard, Inc., et al.*, United
25 States District Court, Eastern District of New York, Case No. CV11-2632 (DRH);
26 November 5, 2013, in *Giordano v. C.R. Bard, Inc., et al.*, Superior Court of California,
27 San Diego County, East County Regional Center, Case No. 00069363-CU-PO-EC;
28 December 19, 2013, in *Payne v. C.R. Bard, Inc., et al.*, United States District Court,
 Middle District of Florida, Orlando Division, Case No. 6:11-cv-01582-Orl-37GJK;

1 October 29, 2014, in *Tillman v. C.R. Bard, Inc.*, United States District Court, Middle
2 District of Florida, Jacksonville, Case No. 3:13-cv-222-J-34-JBT; and December 19,
3 2014, in *Kilver v. C.R. Bard, Inc.*, United States District Court, Central District of Illinois,
4 Case No. 1:13-cv-01219-MMM-JAG.

5 Andrzej Chanduskzko
6 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

7 Mr. Chanduskzko has been an employee of BPV since 2002; prior to that, he was an
8 employee at NMT working on IVC filters. At BPV, he was a Senior Engineer, Research &
9 Development Staff Engineer from 2004 through 2008, Staff Engineer from 2009 through
10 2014, and Principal Engineer since 2015. Plaintiff expects that he is knowledgeable
11 regarding the matters that were the subject of his employment with Bard and NMT, as
12 well as his depositions taken on September 22, 2010, in *Vedas v. C.R. Bard, Inc., et al.*,
13 Superior Court of Arizona, Maricopa County, Case No. CV2010-019655, June 21, 2013,
14 in *Anderson v. C.R. Bard, Inc., et al.*, United States District Court, Eastern District of New
15 York, Case No. CV11- 2632 (DRH), October 10, 2013, in *Phillips v. C.R. Bard, Inc.*,
16 United States District Court, District of Nevada, Case No. 3:12-cv-00344-RCJ-WGC, and
17 April 23, 2015, in *Arnold, et al. v. C.R. Bard, Inc., et al.*, United States District Court,
18 Northern District of Texas, Dallas Division, Case No. 5:13-cv-00609-HLH.

19 David Ciavarella, M.D.
20 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

21 Dr. Ciavarella has been Vice President Corporate Clinical Affairs at C.R. Bard since
22 2004. Plaintiff expects that he is knowledgeable regarding the matters that were the
23 subject of his employment with Bard and depositions taken on March 1, 2011, and August
24 29, 2012, in *Tyson v. C.R. Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County,
25 Case No. CV2010- 011149, November 12, 2013, in *Giordano v. C.R. Bard, Inc., et al.*,
26 Superior Court of California, San Diego County, East County Regional Center, Case No.
27 00069363-CU-PO-EC, and July 29, 2014, in *Coker v. C.R. Bard, Inc., et al.*, United States
28 District Court, Northern District of Georgia, Atlanta Division, Case No. 1:13-cv-0515.

 Len DeCant
 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

1 Mr. DeCant was Vice President Research & Development for BPV from 2002 to 2007.
2 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of
3 his employment with Bard and his deposition taken on May 24, 2016, in the Bard IVC
4 Filter MDL.

5 David Dimmit
6 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

7 Mr. Dimmit is the Vice President and Group Controller at C.R. Bard; Plaintiff expects that
8 he is knowledgeable regarding matters that are/were subject to his employment with Bard
9 and his deposition was taken on January 26, 2017 as to the defendants' financial status,
10 assets, and net worth. Plaintiff does not anticipate use of Mr. Dimmit's testimony unless
11 there is a finding of punitive conduct and the trial proceeds to a punitive damages phase
12 pursuant to O.C.G.A. 51-12-5.1.

13 Christopher Ganser
14 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

15 Mr. Ganser was Vice President, Regulatory Science at C.R. Bard from 2005 through 2006
16 and Vice President Quality, Environmental Services, & Safety from 2007 through 2010.
17 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of
18 his employment with Bard and his depositions taken on February 28, 2011, in *Newton v.*
19 *C.R. Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case No. CV2009-
20 019232, September 9, 2013, in *Anderson v. C.R. Bard, Inc., et al.*, United States District
21 Court, Eastern District of New York, Case No. CV11-2632 (DRH), and October 11, 2016,
in the Bard IVC Filter MDL.

22 David Mickey Graves
23 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

24 Mr. Graves was an Engineer at BPV beginning in 2004 to at least 2014. Plaintiff expects
25 that he is knowledgeable regarding the matters that were the subject of his employment
26 with Bard and his deposition taken on February 27, 2014, in *Ocasio, et al. v. C.R. Bard,*
27 *Inc., et al.*, United States District Court, Middle District of Florida, Tampa Division, Case
No. 8:13-cv-01962-DSM-AEP.

28 Janet Hudnall
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

1 Ms. Hudnall was an employee at BPV from 1998 to 2008, and has recently become
 2 employed by Bard again; she held positions as Product Development Engineer, Product
 3 Manager, and Marketing Manager. Plaintiff expects that she is knowledgeable regarding
 4 the matters that were the subject of her employment with Bard and her depositions taken
 5 on November 3, 2010, in *Newton v. C.R. Bard, Inc., et al.*, Superior Court of Arizona,
 6 Maricopa County, Case No. CV2009-019232, and November 1, 2013, in *Phillips v. C.R.*
 7 *Bard, Inc.*, United States District Court, District of Nevada, Case No. 3:12-cv-00344-RCJ-
 8 WGC.

9 Krishna Kandarpa, M.D.
 National Institute of Health
 10 Bethesda, MD 20892

11 Dr. Kandarpa was the Medical Monitor for Bard's EVEREST Retrievability Study.
 12 Plaintiff expects he is knowledgeable about and will provide testimony concerning the
 13 EVEREST Study and all documents related to the same, including his observations, his
 14 concerns and findings, complications and adverse events that occurred during the study,
 15 design and purpose of the study, his recommendations to and interactions with Bard and
 16 its representatives/agents based on the study, and all other related facts and circumstances.

17 Thomas Kinney, MD, MSME
 c/o Gallagher & Kennedy
 2575 E. Camelback Road, 11th Floor
 18 Phoenix, Arizona 85016

19 Dr. Kinney is an Interventional Radiologist who was a consultant, key opinion leader and
 20 invited panel member for Bard on IVC filters. Plaintiff expects that he is knowledgeable
 21 regarding the matters that were the subject of his relationship with Bard, and will testify
 22 consistent with expert report and deposition given in this litigation. He is also disclosed as
 23 an expert, below.

24 Bill Little
 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

25 Mr. Little was Vice President of Global Marketing at BPV from 2008 through 2011.
 26 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of
 27 his employment with Bard and his deposition taken on July 21, 2016, in the Bard IVC
 28 Filter MDL.

1 Chad Modra
2 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

3 Mr. Modra was Director Quality Assurance and Vice President Quality Assurance at BPV
4 from 2011 through 2014. Plaintiff expects that he is knowledgeable regarding the matters
5 that were the subject of his employment with Bard and his depositions taken on March 28,
6 2013, in *Phillips v. C.R. Bard, Inc.*, United States District Court, District of Nevada, Case
7 No. 3:12-cv-00344-RCJWGC, June 6, 2014, in *Ocasio, et al. v. C.R. Bard, Inc., et al.*,
8 United States District Court, Middle District of Florida, Tampa Division, Case No. 8:13-
9 cv-01962-DSM-AEP, and December 15, 2015, and January 20, 2016, in the Bard IVC
Filter MDL.

10 Daniel Orms
11 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

12 Daniel Orms was an employee of BPV from 1997 through 2012 as a Sales Representative,
13 District Manager, and Regional Manager. Plaintiff expects that he is knowledgeable
14 regarding the matters that were the subject of his employment with Bard and his
15 deposition taken on August 16, 2016, in the Bard IVC Filter MDL.

16 Abithal Raji-Kubba
17 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

18 Ms. Raji-Kubba was Vice President Research & Development at BPV from 2007 through
19 2010 and Vice President Lutonix Technology Center from 2011 through 2012. Plaintiff
20 expects that she is knowledgeable regarding the matters that were the subject of her
21 employment with Bard and her deposition taken on July 18, 2016, in the Bard IVC Filter
MDL.

22 Michael Randall
23 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

24 Mr. Randall has been an employee of BPV in the Research & Development department
25 since 2006; he has held several positions, including Engineer, Program Manager,
26 Associate Director, and Director. Plaintiff expects that he is knowledgeable regarding the
27 matters that were the subject of his employment with Bard and his depositions taken on
28 January 18, 2017, and February 2, 2017, in the Bard IVC Filter MDL.

Frederick B. Rogers, M.D.

1 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

2 Dr. Rogers was the author of a large study establishing that IVC filters do not reduce the
3 rate of PE in trauma patients. Plaintiff further expects that he is knowledgeable regarding
4 the matters that were the subject of his deposition taken on July 18, 2017, in *In re: Bard*
5 *IVC Filters Products Liability Litigation*, No. MD-15-02641-PHX-DGC, and will testify
6 consistent with that deposition. He is also disclosed as an expert, below.

7 Gin Schulz

c/o Counsel for Bard Peripheral Vascular and C.R. Bard

8 Ms. Schulz was Vice Present Quality Assurance at BPV from 2005 to 2011 and in the
9 Quality Assurance department at C.R. Bard since 2011, including as Vice President
10 Quality Assurance. Plaintiff expects that she is knowledgeable regarding the matters that
11 were the subject of her employment with Bard and her depositions taken on September
12 13, 2013, in *Anderson v. C.R. Bard, Inc., et al.*, United States District Court, Eastern
13 District of New York, Case No. CV11-2632 (DRH), and January 30, 2014, in *Phillips v.*
14 *C.R. Bard, Inc.*, United States District Court, District of Nevada, Case No. 3:12-cv-00344-
15 RCJ-WGC.

16 Christopher Smith

c/o Counsel for Bard Peripheral Vascular and C.R. Bard

17 Mr. Smith was the supervisor of Melanie Vilece during the relevant time period and when
18 she was the sales representative for Memorial Health University Medical Center. Plaintiff
19 expects that Mr. Smith has knowledge and would testify at trial regarding the information
20 Bard provided and did not provide to its sales force and to physicians relating to the IVC
21 filters marketed and sold to physicians and hospitals and specifically what information
22 was provided to him and to the sales representatives reporting to him, including Melanie
23 Vilece, regarding Bard's IVC filters and what information they would and could have
24 conveyed to physicians who would use those devices. Plaintiff expects that his testimony
25 at trial will be consistent with the testimony at his deposition taken on April 11, 2017, in
26 this MDL.

27 Mehdi Syed

28 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

1 Mr. Syed is the Vice President of Operations at Becton Dickinson and was designated by
2 Bard to testify on the subjects notices for the deposition relating to punitive damages and
3 Bard's financial condition; Plaintiff expects that he is knowledgeable regarding matters
4 that are/were subject to his employment with Bard and his deposition was taken on March
5 2, 2018, as to Defendants' financial status, assets, and net worth. Plaintiff does not
6 anticipate use of Mr. Syed's testimony unless there is a finding of punitive conduct and
7 the trial proceeds to a punitive damages phase pursuant to O.C.G.A. § 51-12-5.1.

8 Alex Tessmer
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

9 Mr. Tessmer was an employee and engineer at BPV in the Research & Development
10 department from 1997 through 2004. Plaintiff expects that he is knowledgeable regarding
11 the matters that were the subject of his employment with Bard and his deposition taken on
12 June 12, 2013, in *Phillips v. C.R. Bard, Inc.*, United States District Court, District of
13 Nevada, Case No. 3:12-cv-00344-RCJ-WGC.

14 Carol Vierling
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

15 Ms. Vierling was the Director, Regulatory Affairs at BPV from 1994 through 2002.
16 Plaintiff expects that she is knowledgeable regarding the matters that were the subject of
17 her employment with Bard and her deposition taken on May 11, 2016, in the Bard IVC
18 Filter MDL.

19 Melanie Vilece-Sussman
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

20 Ms. Vilece-Sussman was a sales representative for Bard Peripheral Vascular Incorporated
21 ("BPV") at the time of and preceding the implantation of the Eclipse IVC filter in
22 Plaintiff. Ms. Vilece-Sussman's territory included Memorial Health University Medical
23 Center in Savannah, Georgia. Plaintiff expects that her testimony at trial will be
24 consistent with the testimony at her deposition taken on April 7, 2017, in this MDL.

25 Steve Williamson
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

26 Mr. Williamson has been President at BPV since 2012. Plaintiff expects that he is
27 knowledgeable regarding the matters that were the subject of his employment with Bard
28

1 and his deposition taken on September 7, 2016, in the Bard IVC Filter MDL.

2 Natalie Wong
3 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

4 Ms. Wong has been an employee of BPV since 2004; she has held positions as Quality
5 Engineer, Field Assurance Quality Engineering Manager, Quality Engineering Manager,
6 and Senior Quality Engineer, New Product Development. Plaintiff expects that she is
7 knowledgeable regarding the matters that were the subject of her employment with Bard
8 and her depositions taken on September 21, 2010, in Veda v. C.R. Bard, Inc., et al.,
9 Superior Court of Arizona, Maricopa County, Case No. CV2010-019655, and October 18,
10 2016, in the Bard IVC Filter MDL.

11 **Expert Witnesses:**

12 David Garcia, M.D.
13 University of Washington School of Medicine
14 Division of Hematology, Box 357710
15 Seattle, Washington 98195-7710

16 Dr. Garcia is a hematology expert for Plaintiff. Dr. Garcia is expected to testify about the
17 general liability of the Bard defendants, including without limitation the risk versus
18 benefit analysis associated with the use of IVC filters. Dr. Garcia has also disclosed case-
19 specific opinions relating to Mrs. Jones' condition, including that the presence of the filter
20 fragment in her pulmonary artery presents a significant risk factor for the development of
21 future thrombus and that the filter fragment has likely caused injury to the inner wall of
22 the pulmonary artery, such that it could cause future thrombus from that injury; a future
23 thrombus in the pulmonary artery could be significant and Mrs. Jones should be
24 therapeutically anticoagulated indefinitely. Dr. Garcia will further testify consistent with
25 his deposition and expert report in this litigation. Further, Dr. Garcia will testify about the
26 foundation and bases for his opinions, including his review of medical and scientific
27 literature, medical and scientific literature he has authored and the associated research,
28 Bard documents, and other information he has reviewed and relied upon. Dr. Garcia will
also respond to opinions and testimony of defense experts.

Darren R. Hurst, M.D.
c/o Gallagher & Kennedy

1 2575 E. Camelback Road, 11th Floor
2 Phoenix, Arizona 85016

3 Dr. Hurst is Plaintiff's vascular and interventional radiologist expert. Dr. Hurst is
4 expected to testify as to the Defendants' liability and the design problems associated with
5 the IVC filter, causation, and damages. Dr. Hurst will testify consistent with his
6 deposition and expert report in this case. Further, Dr. Hurst will testify about the
7 foundation and bases for his opinions, including his review of medical and scientific
8 literature, Bard documents, and other information he has reviewed and relied upon. Dr.
9 Hurst will also provide foundational testimony for Plaintiff's medical illustrations and
10 animations. Dr. Hurst will also respond to opinions and testimony of defense experts.

11 Thomas Kinney, MD, MSME
12 c/o Gallagher & Kennedy
2575 E. Camelback Road, 11th Floor
Phoenix, Arizona 85016

13 Dr. Kinney is an interventional radiology expert for Plaintiff. Dr. Kinney is expected to
14 testify about the general liability of the Bard defendants. Dr. Kinney will further testify
15 consistent with his deposition and expert report in this litigation. Further, Dr. Kinney will
16 testify about the foundation and bases for his opinions, including his review of medical
17 and scientific literature, Bard documents, and other information he has reviewed and
18 relied upon. Dr. Kinney will also respond to opinions and testimony of defense experts.

19 Robert McMeeking, Ph.D.
20 c/o Gallagher & Kennedy
2575 E. Camelback Road, 11th Floor
Phoenix, Arizona 85016Dr.

21 Dr. McMeeking is a materials and mechanical engineer and is experienced in safety,
22 reliability and effectiveness of biomedical implant devices. Dr. McMeeking is expected to
23 testify that the design of the Eclipse filter is inherently dangerous and prone to numerous
24 failure modes and there were safer alternative designs which were available to
25 Defendants. Dr. McMeeking is expected to testify and describe alternative designs of IVC
26 filters including the Simon Nitinol filter, which are feasible and reduce the tendency to
27 tilt, perforate, migrate, fracture, and otherwise fail.

28 Dr. McMeeking is expected to testify about his analyses and calculations which predict

1 stress, strain, and strength of the Eclipse filter. He will explain why the filter testing
 2 conducted by Defendants was inadequate and misleading. Further, Dr. McMeeking will
 3 testify about the foundation and bases for his opinions, including his review of medical
 4 and scientific literature, Bard documents, and other information he has reviewed and
 5 relied upon. Dr. McMeeking is also expected to testify about the following:

- 6 • The Eclipse filter has a design that makes it prone to migration, tilting,
 7 perforation/penetration through the vena cava, and fracture.
- 8 • The driving force for tilting is the relaxation of strain energy in the filter.
- 9 • Tilting allows arms and legs to spread out, thereby reducing the strain and strain
 10 energy in the filter.
- 11 • The filter design makes it probable that limbs will perforate into the wall of the
 12 vena cava.
- 13 • Pressure applied from the arms and legs of the filter provide the driving forces
 14 that lead to penetration in the vena cava walls.
- 15 • The filter design causes increased pressure from the arms and legs against the
 16 vena cava wall.
- 17 • The relatively sharp ends of some arms and legs of the IVC filter can press
 18 aggressively into the vena cava wall thereby contributing to higher pressure to the
 19 vena cava wall when the filter becomes severely tilted.
- 20 • A severely tilted filter will likely perforate the vena cava wall.
- The association between failure modes found with Bard filters.

21 Dr. McMeeking may also respond to opinions and testimony of defense experts. In
 22 addition, Plaintiff anticipates that Dr. McMeeking will testify consistent with his expert
 23 reports and depositions given to date.

24 Mark Moritz, M.D.
 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

25 Dr. Moritz gave general expert opinions on behalf of Bard in the MDL, as well as case
 26 specific opinions in at least one of the MDL bellwethers. Plaintiff expects that he is
 27 knowledgeable regarding the matters that were the subject of his deposition taken on July
 28 18, 2017, in *In re: Bard IVC Filters Products Liability Litigation*, No. MD-15-02641-

1 PHX-DGC, and will testify consistent with that deposition.

2 Derek David Muehrcke, M.D.
3 c/o Gallagher & Kennedy
4 2575 E. Camelback Road, 11th Floor
5 Phoenix, Arizona 85016

6 Dr. Muehrcke is a cardiothoracic and vascular surgeon. Dr. Muehrcke is expected to
7 testify about the liability of the Bard defendants as well as causation and damages caused
8 by the defective IVC filter. Dr. Muehrcke will testify consistent with his deposition and
9 expert report in this case. Further, Dr. Muehrcke will testify about the foundation and
10 bases for his opinions, including his review of medical and scientific literature, Bard
11 documents, and other information he has reviewed and relied upon. Dr. Muehrcke will
12 also provide foundational testimony for Plaintiff's medical illustrations and animations.
13 Dr. Muehrcke will also respond to opinions and testimony of defense experts.

14 Frederick B. Rogers, M.D.
15 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

16 Dr. Rogers gave general expert opinions on behalf of Bard in the MDL, as well as case
17 specific opinions in at least one of the MDL bellwethers. He was the author of a large
18 study establishing that IVC filters do not reduce the rate of PE in trauma patients. Plaintiff
19 further expects that he is knowledgeable regarding the matters that were the subject of his
20 deposition taken on July 18, 2017, in *In re: Bard IVC Filters Products Liability Litigation*,
21 No. MD-15-02641-PHX-DGC, and will testify consistent with that deposition.

22 J. Matthew Sims, MC, MS
23 c/o Gallagher & Kennedy
24 2575 E. Camelback Road, 11th Floor
25 Phoenix, Arizona 85016

26 Mr. Sims is a Vocational Economist expert for the Plaintiff. He will provide testimony
27 and opinion as to the present value of the life care plan for Plaintiff and projection of costs
28 prepared by Plaintiff's Medical Services Consultant and Life Care Planner expert, Lora
White. He will testify consistent with his expert report and deposition given in this case.

26 Moni Stein, MD
27 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

28 Dr. Stein gave general expert opinions on behalf of Bard in the MDL, as well as case
specific opinions in at least one of the MDL bellwethers. Plaintiff expects that he is

1 knowledgeable regarding the matters that were the subject of his deposition taken on July
 2 31, 2017 in *In re: Bard IVC Filters Products Liability Litigation*, No. MD-15-02641-
 3 PHX-DGC, and will testify consistent with that deposition.

4 Lora K. White, RNBC, BSN, CCM, CNLCP
 5 c/o Gallagher & Kennedy
 2575 E. Camelback Road, 11th Floor
 6 Phoenix, Arizona 85016

7 Ms. White is a Medical Services Consultant and Life Care Planner expert for the Plaintiff.
 8 She prepared a life care plan for Plaintiff and projection of costs for the same arising from
 9 the injuries and damages caused by the failure of Plaintiff's Bard Eclipse Filter. She will
 10 testify consistent with her expert report and deposition given in this case.

11 b. Witnesses Plaintiff may call at trial (live and/or by deposition)

12 **Fact Witnesses:**

13 Shari Allen (O'Quinn)
 14 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

15 Ms. Allen was the Regulatory Affairs Manager for BPV in 2004 and the Director of
 16 Regulatory Affairs and Clinical for BPV in 2005 and 2006. Plaintiff expects that she is
 17 knowledgeable regarding the matters that were the subject of her employment with Bard
 18 and her depositions taken on November 2, 2010, in *Newton v. C.R. Bard, Inc., et al.*,
 19 Superior Court of Arizona, Maricopa County, Case No. CV2009-019232, and October 9,
 20 2013, in *Giordano v. C.R. Bard, Inc., et al.*, Superior Court of California, San Diego
 21 County, East County Regional Center, Case No. 00069363-CU-PO-EC.

22 Brian Barry
 23 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

24 Mr. Barry was the Vice President Regulatory/Clinical Affairs for Bard Access Systems
 25 from 1994 through 1997, Vice President Corporate Regulatory Affairs for C.R. Bard from
 26 1997 through 2000, and Vice President of Regulatory Affairs and Clinical Affairs for C.R.
 27 Bard from 2003 to 2007. Plaintiff expects that he is knowledgeable regarding the matters
 28 that were the subject of his employment with Bard and his deposition taken on January 31,
 2014, in *Jones v. C.R. Bard, Inc.*, United States District Court, Northern District of Texas,
 Dallas Division, Case No. 3:13-cv-00599-K.

1 Kevin Boyle
2 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

3 Mr. Boyle was Vice President of Research & Development at BPV from 2013 through
4 2015. Plaintiff expects that he is knowledgeable regarding the matters that were the
5 subject of his employment with Bard and his deposition taken on February 2, 2017, in the
6 Bard IVC Filter MDL.

7 Gary S. Cohen, M.D.
8 Temple University
9 Medicine Education and Research Building (MERB)
10 3500 N. Broad Street
11 Philadelphia, PA 19140

12 Dr. Cohen is an Interventional Radiologist at Temple University Hospital. He was a
13 consultant and key opinion leader for Bard on IVC filters. Plaintiff expects that he is
14 knowledgeable regarding the matters that were the subject of his deposition taken on
15 January 25, 2017, in the Bard IVC Filter MDL.

16 Robert Cortelezzi
17 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

18 Mr. Cortelezzi was an employee at BPV from approximately 1990 to 2008; he was a
19 Regional Manager from 2004 through 2008. Plaintiff expects that he is knowledgeable
20 regarding the matters that were the subject of his employment with Bard and his
21 deposition taken on November 11, 2016, in the Bard IVC Filter MDL.

22 John DeFord
23 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

24 Mr. DeFord has been an employee of C.R. Bard since 2004; he is presently the Senior
25 Vice President for Science, Technology, and Clinical Affairs and has held that position
26 since approximately 2007; from 2004 to 2007, he was Vice President of Science and
27 Technology. Plaintiff expects that his testimony at trial will be consistent with the
28 testimony taken at his deposition on June 2, 2016, in this MDL.

Mary Edwards
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

Ms. Edwards was Vice President Regulatory Affairs/Clinical Affairs at C.R. Bard from
1999 to 2005. Plaintiff expects that she is knowledgeable regarding the matters that were
the subject of her employment with Bard and her depositions taken on January 20, 2014,

1 in *Giordano v. C.R. Bard, Inc., et al.*, Superior Court of California, San Diego County,
2 East County Regional Center, Case No. 00069363-CU-PO-EC, and August 19, 2016, in
3 the Bard IVC Filter MDL.

4 Thomas Ferari
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

5 Mr. Ferari was an Engineer at BPV. Plaintiff expects that he is knowledgeable regarding
6 the matters that were the subject of his employment with Bard and his depositions taken
7 on October 20, 2010, in *Vedas v. C.R. Bard, Inc., et al.*, Superior Court of Arizona,
8 Maricopa County, Case No. CV2010- 019655, and all related cross-noticed cases and
9 April 2, 2014, in *Coker v. C.R. Bard, Inc., et al.*, United States District Court, Northern
10 District of Georgia, Atlanta Division, Case No. 1:13-cv-0515.

11 Kay Fuller

12 Ms. Fuller was Senior Regulatory Specialist at BPV from 1999 through 2004. Plaintiff
13 expects that she is knowledgeable regarding the matters that were the subject of her
14 employment with Bard and her depositions taken on November 9, 2010, in *Newton v. C.R.*
15 *Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case No. CV2009-
16 019232, and January 11, 2016, in the Bard IVC Filter MDL.

17 Holly Glass
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

18 Ms. Glass was Vice President Government & Public Relations at C.R. Bard from 2002
19 through 2009. Plaintiff expects that she is knowledgeable regarding the matters that were
20 the subject of her employment with Bard and her deposition taken on September 23, 2016,
21 in the Bard IVC Filter MDL.

22 Jason Greer
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

23 Mr. Greer was a Sales Representative and then District Manager at BPV from 1999
24 through 2007. Plaintiff expects that he is knowledgeable regarding the matters that were
25 the subject of his employment with Bard and his depositions taken on June 20, 2010, in
26 *Newton v. C.R. Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case No.
27 CV2009-019232, October 22, 2010, in *Vedas v. C.R. Bard, Inc., et al.*, Superior Court of
28

1 Arizona, Maricopa County, Case No. CV2010-019655, August 11, 2014, in *Barkley, et al.*
 2 *v. C.R. Bard, Inc., et al.*, Arizona Superior Court, Maricopa County, Case No. CV2011-
 3 021250, and September 26, 2011, in *Tyson v. C.R. Bard, Inc., et al.*, Superior Court of
 4 Arizona, Maricopa County, Case No. CV2010-011149.

5 Brian Hudson
 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

6 Mr. Hudson was an employee at BPV from 1999 to 2012; he held positions as Quality
 7 Engineer, Senior Risk Manager, and Associate Director Quality Assurance. Plaintiff
 8 expects that he is knowledgeable regarding the matters that were the subject of his
 9 employment with Bard and his depositions taken on January 21, 2011, in *Tyson v. C.R.*
 10 *Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case No. CV2010-
 11 011149, and January 17, 2014, in *Giordano v. C.R. Bard, Inc., et al.*, Superior Court of
 12 California, San Diego County, East County Regional Center, Case No. 00069363-CU-PO-
 13 EC.

14 Alfred Jones
 c/o Gallagher & Kennedy
 15 2575 E. Camelback Road, 11th Floor
 16 Phoenix, Arizona 85016

17 Mr. Jones is Plaintiff's husband. He will testify regarding his observations of
 18 Plaintiff's daily issues and injuries caused by her Eclipse Filter and the failures of that
 19 filter, the overall impact of the injury on her daily activities and quality of life, and
 20 Plaintiff's mental and physical condition before and after the implant of her Eclipse Filter.
 He will also testify consistent with his deposition in this matter.

21 John Lehmann, M.D.
 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

22 Dr. Lehmann was Group Medical Director and Vice President of Medical Affairs for C.R.
 23 Bard from 1991 to 1995; he was a consultant and acting Medical Director for C.R. Bard in
 24 2003 and 2004. Plaintiff expects that he is knowledgeable regarding the matters that were
 25 the subject of his employment with Bard and his depositions taken on April 2, 2013, in
 26 *Phillips v. C.R. Bard, Inc.*, United States District Court, District of Nevada, Case No.
 27 3:12-cv-00344-RCJ-WGC, and all related cross-noticed cases and August 7, 2014, in
 28

1 *Coker v. C.R. Bard, Inc., et al.*, United States District Court, Northern District of Georgia,
2 Atlanta Division, Case No. 1:13-cv-0515.

3 John McDermott
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

4 Mr. McDermott was President of BPV from 1996 through 2006. Plaintiff expects that he
5 is knowledgeable regarding the matters that were the subject of his employment with Bard
6 and his depositions taken on November 1, 2010, in *Tyson v. C.R. Bard, Inc., et al.*,
7 Superior Court of Arizona, Maricopa County, Case No. CV2010-011149, and February 5,
8 2014, in *Giordano v. C.R. Bard, Inc., et al.*, Superior Court of California, San Diego
9 County, East County Regional Center, Case No. 00069363-CU-PO-EC.

10 Patrick McDonald
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

11 Mr. McDonald is an employee of BPV as a Sales Representative and Field Sales Trainer.
12 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of
13 his deposition taken on July 29, 2016 in the Bard IVC Filter MDL.

14 Kim Romney
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

15 Ms. Romney has been an employee of BPV since 2011 and is presently a Senior Product
16 Manager for Ports and Filters. Plaintiff expects that she is knowledgeable regarding the
17 matters that were the subject of her employment with Bard and her depositions taken on
18 August 30, 2016, September 7, 2016, and January 18, 2017, in the Bard IVC Filter MDL.

19 Jack Sullivan
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

20 Mr. Sullivan was an employee at BPV from 1994 to 2013; he was in the Sales department
21 and held positions including District Manager and Regional Manager. Plaintiff expects
22 that he is knowledgeable regarding the matters that were the subject of his employment
23 with Bard and his depositions taken on September 16, 2016, and November 3, 2016, in the
24 Bard IVC Filter MDL.

25 Doug Uelmen
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

26 Mr. Uelmen was an employee at C.R. Bard and then BPV from approximately 1981
27 through 2005; he was Vice President Quality Assurance at BPV from 2003 through 2005.
28

1 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of
2 his employment with Bard and his depositions taken on October 4, 2013, in *Giordano v.*
3 *C.R. Bard, Inc., et al.*, Superior Court of California, San Diego County, East County
4 Regional Center, Case No. 00069363-CU-PO-EC, and May 13, 2014, in *Coker v. C.R.*
5 *Bard, Inc., et al.*, United States District Court, Northern District of Georgia, Atlanta
6 Division, Case No. 1:13-cv-0515.

7 John Van Vleet
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

8 Mr. Van Vleet has been the Vice President Regulatory Affairs/Clinical Affairs at BPV
9 since 2007. Plaintiff expects that he is knowledgeable regarding the matters that were the
10 subject of his employment with Bard and his depositions taken on September 29, 2016,
11 and January 17, 2017, in the Bard IVC Filter MDL.

12 Bryan Vogel
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

13 Mr. Vogel has been a Clinical Specialist II for Bard since 2012. Plaintiff expects that he is
14 knowledgeable regarding the matters that were the subject of his employment with Bard
15 and his deposition taken on August 15, 2017, in the Bard IVC Filter MDL.

16 John Weiland
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

17 Mr. Weiland has been the President and Chief Operating Officer of C.R. Bard throughout
18 the relevant time period. Plaintiff expects that he is knowledgeable regarding the matters
19 that were the subject of his employment with Bard and his deposition taken on April 23,
20 2014, in *Phillips v. C.R. Bard, Inc.*, United States District Court, District of Nevada, Case
21 No. 3:12-cv-00344-RCJWGC.

22 John Wheeler
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

23 Mr. Wheeler has been employed in the Quality Assurance department at BPV since 2012.
24 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of
25 his employment with Bard and his deposition taken on July 29, 2016, in the Bard IVC
26 Filter MDL.
27
28

1 Mark Wilson
2 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

3 Mr. Wilson worked in the Sales department at BPV from 2006 through 2010 as a sales
4 training manager. Plaintiff expects that he is knowledgeable regarding the matters that
5 were the subject of his employment with Bard and the deposition taken on January 31,
6 2017, in the Bard IVC Filter MDL.

7 **Expert Witnesses:**

8 Rebecca Betensky, Ph.D.
9 655 Huntington Avenue
Building II, Room 421
Boston, MA 01225

10 Dr. Betensky is a biostatistician. Dr. Betensky is expected to testify about her analysis and
11 data relating to complication rates of Bard's defective IVC filter, various design failure
12 modes effects analysis documents, and about various filter migration test results. Dr.
13 Betensky will testify consistent with her deposition and expert report. Further, Dr.
14 Betensky will testify about the foundation and bases for her opinions, including her
15 review of medical and scientific literature, Bard documents, and other information she has
16 reviewed and relied upon. Dr. Betensky will also respond to opinions and testimony of
17 defense experts.

18 Suzanne Parisian, M.D.
19 MD Assist President
7117 N. 3rd St.
20 Phoenix, AZ 85020

21 Suzanne Parisian, M.D., is an expert in the field of FDA rules and regulations. Dr.
22 Parisian is expected to testify consistent with her expert reports and depositions. Further,
23 Dr. Parisian will testify about the foundation and bases for her opinions, including her
24 review of medical and scientific literature, Bard documents, and other information she has
25 reviewed and relied upon. Plaintiff also anticipates that Dr. Parisian will also respond to
26 opinions and testimony of defense experts.

27 Michael Streiff, M.D.
28 c/o Gallagher & Kennedy
2575 E. Camelback Road, 11th Floor
Phoenix, Arizona 85016

1 Dr. Streiff is a hematology expert for Plaintiff. Dr. Streiff is expected to testify about the
2 general liability of the Bard defendants, including without limitation the risk versus
3 benefit analysis associated with the use of IVC filters. Dr. Streiff will further testify
4 consistent with his deposition and expert report in this litigation. Further, Dr. Streiff will
5 testify about the foundation and bases for his opinions, including his review of medical
6 and scientific literature, medical and scientific literature he has authored and the
7 associated research, Bard documents, and other information he has reviewed and relied
8 upon. Dr. Streiff will also respond to opinions and testimony of defense experts.

9 8. **Defendants' Witnesses:**

10 Defendants' witnesses who shall be called at trial (either live or by deposition):

11 **Andre Chanduszko**

12 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
13 201 17th Street NW, Suite 1700, Atlanta, GA 30363
14 404-322-6000

15 **Fact Witness**

16 **Subject Matter:** Mr. Chanduszko is an employee of BPV working as a staff engineer with
17 responsibilities related to the design, development, and testing of IVC filters. Mr.
18 Chanduszko may provide testimony regarding biomedical and biomechanical engineering
generally, as well as testimony regarding the design, development, manufacture, testing,
clearance, evolution, and use of Bard filters, specifically. Mr. Chanduszko may also provide
testimony that was the subject of previous disclosures or his previous deposition testimony.

19 **Chad Modra**

20 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
21 201 17th Street NW, Suite 1700, Atlanta, GA 30363
22 404-322-6000

23 **Fact Witness**

24 **Subject Matter:** Mr. Modra was formerly Vice President of Quality Assurance at BPV,
25 and is currently Staff Vice President of Operations at C. R. Bard, Inc. Mr. Modra may testify
26 regarding any and all aspects of Bard's quality assurance processes that are in place or that
27 have been in place for Bard's retrievable IVC filters. Mr. Modra may testify regarding
28 Bard's processes and procedures for addressing complaints, including complaint handling,
investigations, and MDR reporting for its IVC filters. He may also testify to certain
communications and inspections/audits with FDA. To the extent that evidence related to the
FDA Warning and 483 Letters is admitted, Mr. Modra may offer testimony regarding the
same. Mr. Modra may also provide testimony that was the subject of his previous deposition
testimony or the subject of declarations/affidavits he has submitted in this action.

Christopher S. Morris, M.D.

Department of Radiology
The University of Vermont Medical Center
111 Colchester Avenue
Burlington, VT 05401
802-847-8359

Expert Witness

Subject Matter: Dr. Morris is a medical doctor and is a Fellow of the Society of Interventional Radiology. He is certified in Radiology and holds a Certificate of Added Qualifications in Vascular and Interventional Radiology. Dr. Morris is a Professor of Radiology and Surgery at the College of Medicine at the University of Vermont. Dr. Morris may provide expert testimony about the historical use, risks, and benefits of IVC filters; the health conditions that IVC filters are used to treat; alternate treatments for DVT and Pulmonary Embolism; and the medical literature related to IVC filters. Dr. Morris will also testify regarding his personal experience placing and retrieving IVC filters, including Bard IVC filters, and specifically that Bard retrievable filters, including the G2 filter, are safe and effective. He may respond to assumptions, opinions, and testimony offered by various Plaintiff's experts as they relate to the same. Dr. Morris is expected to offer opinions and testify consistent with his expert report(s) served in the MDL, and his previous deposition testimony.

Mike Randall

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

Fact Witness

Subject Matter: Mr. Randall is currently a Director of Research and Development for BPV. Mr. Randall may provide testimony regarding biomedical and biomechanical engineering generally, as well as testimony regarding the design, development, manufacture, testing, clearance, evolution, and use of Bard filters, specifically. Mr. Randall may also provide testimony that was the subject of his previous deposition testimony.

Moni Stein, MD

8121 Crossgate Ct N.
Dublin, OH 53217

Expert Witness

Subject Matter: Dr. Stein is currently Chief of Intervention Radiology at Columbus Radiology Corporation-Radiology Partners. Dr. Stein's qualifications and opinions and the basis of his opinions are disclosed in his expert reports and are also expected to be consistent with his deposition.

1 **John Van Vleet**

2 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
3 201 17th Street NW, Suite 1700, Atlanta, GA 30363
4 404-322-6000

4 **Fact Witness**

5 **Subject Matter:** Mr. Van Vleet an employee of BPV. While at BPV, Mr. Van Vleet has
6 been the Vice President of Regulatory and Clinical Affairs since 2007. Mr. Van Vleet may
7 testify concerning any and all aspects of Bard's clinical affairs policies, procedures, and
8 practices that are, or have been, in place with respect to Bard's IVC filters. Mr. Van Vleet
9 may also testify regarding the regulatory clearance process and communications between
10 the FDA and BPV. Mr. Van Vleet may also provide testimony that was the subject of his
11 previous deposition testimony or the subject of declarations/affidavits he has submitted in
12 this action.

10 Witnesses who may be called at trial (either live or by deposition):

12 **Anthony Avino, MD**

13 4750 Waters Ave. #500
14 Savannah, GA 31404
15 912-352-8346

15 **Fact Witness**

16 **Subject Matter:** Dr. Avino is a physician who treated Plaintiff. Bard expects he will
17 provide testimony regarding that care and treatment and testimony that was the subject of
18 his previous deposition.

18 **Bret Baird**

19 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
20 201 17th Street NW, Suite 1700, Atlanta, GA 30363
21 404-322-6000

21 **Fact Witness**

22 **Subject Matter:** Mr. Baird is a former employee of BPV. While at BPV, Mr. Baird held
23 various positions, including Marketing Manager. In those roles, Mr. Baird was involved
24 with and has personal knowledge of, among other things, BPV's marketing strategies,
25 policies, and practices with regard to certain of Bard's IVC filters. He may also provide
26 testimony that was the subject of his previous deposition testimony.

26 **Brain Barry**

27 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
28 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

Fact Witness

Subject Matter: Mr. Barry is a former employee of C.R. Bard. He may testify regarding the matters that were the subject of his employment with Bard and his deposition.

Kevin Boyle

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

Fact Witness

Subject Matter: Mr. Boyle is currently the Vice President of Research and Development for BPV. Mr. Boyle may testify about BPV's policies and procedures in place for its research and development of its products, including IVC filters. He may testify regarding the testing, development, and design of Bard's IVC filters. He may also provide testimony that was the subject of his previous deposition testimony.

Paul Briant, Ph.D., P.E.

Exponent
149 Commonwealth Drive
Menlo Park, CA 94025
650-326-9400

Expert Witness

Subject Matter: Dr. Briant is a mechanical engineer who specializes in mechanical engineering, solid mechanics, and finite element analysis (FEA) of structures, including medical devices. He is a Principal Engineer with Exponent Failure Analysis Associates. Dr. Briant may provide expert testimony on mechanical engineering, solid mechanics, and finite element analysis (FEA). He may respond to assumptions, opinions, and testimony offered by Plaintiff's expert Dr. McMeeking. Dr. Briant is expected to offer opinions and testify consistent with his expert report(s) served in the MDL, and his previous deposition testimony.

Robert Carr

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

Fact Witness

Subject Matter: Mr. Carr is currently Vice President of International at BPV. He previously held the title of Senior Director of Research and Development at BPV, with responsibility for IVC filters. Mr. Carr may provide testimony regarding biomedical and biomechanical engineering generally, as well as testimony regarding the design, development, manufacture, testing, clearance, evolution, and use of Bard filters, specifically. Mr. Carr may also provide testimony that was the subject of his previous deposition testimony or the subject of declarations/affidavits he has submitted in this action.

1
2 **David Chodos**

3 Wake Forest University Baptist Medical Center
4 Medical Center Blvd.
5 Winston Salem, NC 27157
6 336-716-4507

7 **Fact Witness**

8 **Subject Matter:** Dr. Chodos is a physician who treated Plaintiff. He may testify about his
9 care and treatment of Plaintiff and testimony that was the subject of his deposition taken in
10 this case.

11 **David Ciavarella, M.D.**

12 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
13 201 17th Street NW, Suite 1700, Atlanta, GA 30363
14 404-322-6000

15 **Fact Witness**

16 **Subject Matter:** Dr. Ciavarella is an employee of C. R. Bard, Inc. He is currently Vice
17 President, Corporate Clinical Affairs at Bard, and he has held that title since he began
18 working for C. R. Bard in 2004. Dr. Ciavarella may testify concerning any and all aspects
19 of Bard's clinical affairs policies, procedures, and practices that are, or have been, in place
20 with respect to Bard's IVC filters. Dr. Ciavarella may also provide testimony that was the
21 subject of his previous deposition testimony.

22 Based on reports received by Bard, Dr. Ciavarella may also testify concerning the rates of
23 complications with Bard's IVC filters and analyses performed by Bard regarding adverse
24 event rates. Dr. Ciavarella may also testify that the complication rates reported to Bard
25 remain below the guidelines established by the Society of Interventional Radiologists and
26 Bard's action limits. He may also provide testimony that was the subject of his previous
27 deposition testimony.

28 **Robert Cortelezzi**

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

Fact Witness

Subject Matter: Mr. Cortelezzi was an employee at BPV from approximately 1990 to
2008; he was a Regional Manager from 2004 through 2008. He may testify regarding the
matters that were the subject of his employment with Bard and his deposition taken on
November 11, 2016, in the Bard IVC Filter MDL.

Joni Creal

May be contacted c/o Nelson Mullins Riley & Scarborough LLP

1 201 17th Street NW, Suite 1700, Atlanta, GA 30363
2 404-322-6000

3 **Fact Witness**

4 **Subject Matter:** Ms. Creal started with BPV in 2009. She is Associate Director of
5 Regulatory Affairs. She may testify about BPV's overall regulatory strategy for its filter
6 lines. She may also testify concerning other regulatory options considered by BPV when it
7 determined the best approach to gain FDA clearance for its products. Ms. Creal may testify
8 regarding communications between the FDA and BPV concerning the clearance process for
9 its filters, and any communication between BPV and the FDA concerning these matters.
10 Ms. Creal may also testify regarding BPV's response to requests from the FDA. Ms. Creal
11 may also testify concerning BPV's decision to conduct clinical trials, and the process and
12 procedures for clinical trials and studies.

13 Ms. Creal may also testify regarding the steps that BPV took to ensure that the FDA was
14 always abreast of complications, product improvements, and potential changes to IFUs for
15 its filters. In this regard, Ms. Creal may testify regarding BPV's open and frank
16 communications with the FDA and the FDA's appreciation for BPV's openness and
17 honesty.

18 Ms. Creal may also testify concerning BPV and Bard's strong corporate policy against off-
19 label marketing. In this regard, she may testify regarding the measures undertaken by BPV
20 and Bard to ensure that employees of the corporations did not market any product off-label.
21 Moreover, Ms. Creal may also testify concerning specific actions taken by BPV and Bard
22 if and when they discovered off-label marketing. She may also testify about FAQs and Dear
23 Doctor letters relating to filters and also patient brochures to the extent those become an
24 issue in this case.

25 Ms. Creal may also testify concerning BPV and Bard's policies concerning monetary gifts
26 and agreements to fund medical studies. She may also testify concerning how these policies
27 reflect BPV and Bard's resolve to ensure that any gift or agreement complies with federal
28 regulations. She may also testify about physician training programs relating to filters and
Bard's relationships with certain physicians referred to as key opinion leaders. She may
testify concerning FDA's warning letter to Bard regarding its IVC filters, and Bard's
responses and actions conducted in response to that letter. Finally, she may testify about
studies conducted by Bard relating to safety of its filters.

24 **Len DeCant**

25 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
26 201 17th Street NW, Suite 1700, Atlanta, GA 30363
27 404-322-6000

28 **Fact Witness**

Subject Matter: Mr. DeCant is a former employee of BPV. He served as Vice President
of Research and Development from 2002 through 2007. Mr. DeCant may testify regarding

1 any and all aspects of the design, development, testing, clearance, evolution, and use of
2 Bard filters, including Bard's policies and procedures for design, testing, and evaluation
3 of filters. Mr. DeCant may also provide testimony that was the subject of his previous
4 deposition testimony.

4 **John DeFord**

5 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
6 201 17th Street NW, Suite 1700, Atlanta, GA 30363
7 404-322-6000

7 **Fact Witness**

8 **Subject Matter:** Dr. DeFord is currently Senior Vice President of Science, Technology and
9 Clinical Affairs of C. R. Bard. Dr. DeFord may testify regarding any and all aspects of the
10 design, development, testing, clearance, evolution, and use of Bard filters, including Bard's
11 policies and procedures for design, testing, and evaluation of filters. Dr. DeFord may also
12 provide testimony that was the subject of his previous deposition testimony.

11 **Mary Edwards**

12 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
13 201 17th Street NW, Suite 1700, Atlanta, GA 30363
14 404-322-6000

14 **Fact Witness**

15 **Subject Matter:** Ms. Edwards is a former Vice President for Regulatory/Clinical Affairs
16 of BPV. She may provide testimony regarding of the regulatory clearance process
17 undertaken by BPV for the Recovery® Filter including the 510(k) processes and actions
18 taken by BPV. Additionally, Ms. Edwards may testify concerning BPV's overall
19 regulatory strategy for its filter lines, including the regulatory approach taken by BPV
20 concerning the Recovery® Filter. In addition, Ms. Edwards may also testify concerning
21 other regulatory options considered by BPV when it determined the best approach to gain
22 FDA clearance for its new product. Ms. Edwards may testify regarding the regulatory
23 history of Bard's filters, communications between the FDA and BPV concerning the
24 Recovery® Filter, the clearance process for the Recovery® Filter, and post-clearance
25 communications BPV had with the FDA while she was employed with BPV and testimony
26 that was the subject of her depositions.

23 **Audrey Fasching, Ph.D., P.E.**

24 Anamet, Inc.
25 26102 Eden Landing Road, Suite 3
26 Hayward, CA 94545
27 510-887-8811

26 **Expert Witness**

27 **Subject Matter:** Dr. Fasching is a metallurgical engineer with experience in the areas of
28 failure analysis, welding, heat treatment, corrosion and biomaterials, including nitinol. She

1 is a Senior Materials Engineer at Anamet. She may provide expert testimony about the
2 properties and uses of nitinol in medical devices, industry standards for manufacture of
3 medical device grade nitinol, her observations of the various filter conditions through
4 examination of the filter at issue in this case and other Bard IVC filters. Dr. Fashing may
5 respond to assumptions, opinions, and testimony offered by Plaintiff's expert Dr.
McMeeking. Dr. Fasching is expected to offer opinions and to testify consistent with her
expert report(s) served in the MDL, and her previous deposition testimony.

6 **David W. Feigal, M.D., M.P.H.**

7 11806 Barranca Road
8 Santa Rosa Valley, CA 93012
540-738-2550

9 **Expert Witness**

10 **Subject Matter:** Dr. Feigal is a medical doctor with a Master's Degree in Public Health
11 in the fields of epidemiology and biostatistics. Dr. Feigal may provide expert testimony as
12 an epidemiologist regarding the available resources for analysis of complications rates in
13 IVC filters and the limitations of those resources in accurately reporting rates, predicting
14 rates, or comparing rates of those devices. He may respond to assumptions, opinions, and
testimony offered by various Plaintiff's experts as they relate to such analyses. Dr. Feigal
is expected to offer opinions and testify consistent with his expert report served in the
MDL, and his previous deposition testimony.

15 **Christopher Ganser**

16 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
17 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

18 **Fact Witness**

19 **Subject Matter:** Mr. Ganser is a retired employee of C. R. Bard who has worked for Bard
20 for approximately twenty-two years, and retired in 2011. He held various positions while
21 working for Bard, Vice President of Quality Assurance and Environmental Services and
22 Safety. Mr. Ganser may testify concerning how such policies, procedures, and practices
23 were developed, implemented and reviewed. Mr. Ganser may also testify concerning any
and all aspects of Bard's quality control and field assurance practices and procedures that
are, or have been, in place with respect to Bard's IVC filters as well as testimony that was
the subject of his deposition.

24 **Holly Glass**

25 8280 Greensboro Drive, Suite 601
26 McLean, Va 22101
703-752-1115

27 **Fact Witness**

28 **Subject Matter:** Ms. Glass was Vice President Government & Public Relations at C.R.

1 Bard from 2002 through 2009. She may testify regarding the matters that were the subject
2 of her employment with Bard and her deposition taken on September 23, 2016, in the
3 Bard IVC Filter MDL.

4 **Clement J. Grassi, M.D., FSIR**

5 18 Sussex Road
6 Winchester, MA 01890
617-732-7263

7 **Expert Witness**

8 **Subject Matter:** Dr. Grassi is a medical doctor and is a Fellow of the Society of
9 Interventional Radiology. He is certified in Radiology and holds a Certificate of Added
10 Qualifications in Vascular and Interventional Radiology. From 1985 to 2001, Dr. Grassi
11 held positions of Clinical Fellow, Instructor, and Assistant Professor of Radiology at
12 Harvard Medical School. He is currently affiliated with Hallmark Health and partners
13 Healthcare System. Dr. Grassi may provide expert testimony about the historical use, risks,
14 and benefits of IVC filters; the health conditions that IVC filters are used to treat; and his
15 experience with the Society of Interventional Radiology, specifically including the history
16 and use of the Quality Improvement Guidelines and Practice Parameters relating to IVC
17 Filters that have been published by the SIR. He may also testify about the medical literature
18 related to IVC filters. He may respond to assumptions, opinions, and testimony offered by
19 various Plaintiff's experts as they relate to the same. Dr. Grassi is expected to offer
20 opinions and testify consistent with his expert report served in the MDL, and his previous
21 deposition testimony.

22 **Mickey Graves**

23 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
24 201 17th Street NW, Suite 1700, Atlanta, GA 30363
25 404-322-6000

26 **Fact Witness**

27 **Subject Matter:** Mr. Graves is a Senior Research and Development Engineer with BPV.
28 Mr. Graves may testify about BPV's policies and procedures in place for its research and
development of its products, including IVC Filters. He may testify regarding the testing,
development, and design of Bard's IVC Filters. He may also testify regarding the evolution
of Bard's IVC Filters, including the fact that Bard is constantly evaluating the medical
devices it sells, and it is constantly striving to improve the performance of those devices.
He may also provide testimony that was the subject matter of his previous deposition
testimony.

29 **Jason Greer**

30 Address unknown

31 **Fact Witness**

32 **Subject matter:** Mr. Greer was a Sales Representative and then District Manager at BPV

1 from 1999 through 2007. He may testify regarding the matters that were the subject of his
2 employment with Bard and his deposition.

3 **Kenneth Herbst, MD**

4 5761 LaJolla Hermosa Ave.
5 LaJolla, CA 92037

6 **Expert Witness**

7 **Subject Matter:** Dr. Herbst is a hematologist. Dr. Stein's qualifications and opinions and
8 the basis of his opinions are disclosed in his expert report and are also expected to be
9 consistent with his deposition.

10 **Janet Hudnall**

11 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
12 201 17th Street NW, Suite 1700, Atlanta, GA 30363
13 404-322-6000

14 **Fact Witness**

15 **Subject Matter:** Ms. Hudnall is a former employee of BPV who worked for BPV from
16 1998 to 2008. While at BPV, Ms. Hudnall held various positions, including Senior
17 Marketing Manager. In those roles, Ms. Hudnall was involved with and has personal
18 knowledge of, among other things, BPV's marketing strategies, policies, and practices
19 with regard to the Bard's IVC filter line of products. Ms. Hudnall may testify concerning
20 BPV's marketing strategies, policies, and practices with regard to the Recovery® and G2®
21 Filters.

22 Ms. Hudnall may also testify concerning the training provided by BPV to physicians to
23 familiarize them with the implantation and retrieval of the G2® Filter. Ms. Hudnall may
24 also testify concerning BPV's practices and policies regarding complaints that were
25 communicated by users. Ms. Hudnall may also testify concerning BPV's decision to
26 conduct a clinical trial, called the EVEREST Study, and issues and events associated with
27 or related to the EVEREST Study. In this regard, Ms. Hudnall may testify concerning the
28 selection and clearance process for securing investigators and investigation sites, the
creation and development of the study protocol, the creation and development of the
informed consent form, and the steps taken by BPV to ensure that the study ran properly
and according to established guidelines. She may also provide testimony that was the
subject of her previous deposition testimony.

29 **Brian Hudson**

30 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
31 201 17th Street NW, Suite 1700, Atlanta, GA 30363
32 404-322-6000

33 **Fact Witness**

34 **Subject Matter:** Mr. Hudson has been an employee of BPV since 1999 as a Quality

1 Engineering Technician, a Senior Engineering Technician, and a Quality Engineer, Mr.
2 Hudson may provide testimony regarding filter risk assessment and analysis, review of
3 testing protocols and regulatory compliance data, and the creation of Failure Modes and
4 Effects Analyses (FMEA) that assess the potential hazards related to filters and the
mitigation of those hazards. He may also provide testimony that was the subject of his
previous deposition testimony.

5 **Alfred Jones**

6 May be contacted through Plaintiff's counsel

7 **Fact Witness**

8 **Subject Matter:** Bard expects Mr. Jones to provide testimony consistent with his
deposition given in this case.

9
10 **John Lehman, M.D.**

11 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363

12 **Fact Witness**

13 **Subject Matter:** Dr. Lehman was Group Medical Director and Vice President of Medical
14 Affairs for C.R. Bard from 1991 to 1995; he was a consultant and acting Medical Director
for C.R. Bard in 2003 and 2004. He may provide testimony regarding the matters that
15 were the subject of his work with Bard and his depositions.

16 **William Little**

17 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
18 404-322-6000

19 **Fact Witness**

20 **Subject Matter:** Mr. Little is BPV's former Vice President of Global Marketing. He may
provide testimony regarding BPV's marketing strategies, policies, and practices with
21 regard to Bard's IVC filter line of products. He may also testify regarding communications
by Bard to health care providers regarding its filters and changes or revisions to those
22 communications over time. He may also provide testimony that was the subject matter of
his previous deposition testimony.

23
24 **Judy Ludwig**

25 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
26 404-322-6000

27 **Fact Witness**

28 **Subject Matter:** Ms. Ludwig is currently Senior Manager of Field Assurance at BPV. Ms.
Ludwig may testify regarding any and all aspects of Bard's quality assurance processes

1 that are in place or that have been in place for Bard's retrievable IVC filters. Ms. Ludwig
2 may testify regarding Bard's processes and procedures for adverse complaint handling,
3 complaint investigation, and reporting of adverse events to the FDA regarding its filters.
4 She may also testify to certain communications and inspections/audits with FDA. To the
5 extent that evidence related to the FDA Warning and 483 Letters is admitted, Ms. Ludwig
may offer testimony regarding the same. Ms. Ludwig may also provide testimony that was
the subject of her previous deposition testimony.

6 **Shanice Matthews**

7 May be contacted through Plaintiff's counsel

8 **Fact Witness**

9 **Subject Matter:** Bard expects Ms. Matthews to provide testimony consistent with her
deposition given in this case.

10 **Sharese May**

11 May be contacted through Plaintiff's counsel

12 **Fact Witness**

13 **Subject Matter:** Bard expects Ms. May to provide testimony consistent with her
deposition given in this case.

14 **John McDermott**

15 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
16 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

17 **Fact Witness**

18 **Subject Matter:** Mr. McDermott was President of BPV from 1996 through 2006. He
19 may testify about matters that were the subject of his employment with Bard and his
depositions.

20 **Patrick McDonald**

21 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
22 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

23 **Fact Witness**

24 **Subject Matter:** Mr. McDonald is an employee of BPV as a Sales Representative and
25 Field Sales Trainer. He may testify regarding the matters that were the subject of his
deposition.

26 **Kristen Nelson, MD**

27 4750 Waters, Ave #500
28 Savannah, GA 31404
912-350-8346

Fact Witness

Subject Matter: Dr. Nelson is a physician who treated Plaintiff. She may testify about her care and treatment of Plaintiff and testimony that was the subject of her deposition taken in this case.

Daniel Orms

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

Fact Witness

Subject Matter: Mr. Orms is a former employee of BPV. He may testify about matters that were the subject of his employment with Bard and his depositions.

Shari O'Quinn

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

Fact Witness

Subject Matter: Ms. O'Quinn is a former employee of BPV who worked for BPV from 2003 to 2007. Ms. O'Quinn held three different positions while working for BPV, including Manager of Regulatory Affairs, Director of Regulatory Affairs, and Director of Regulatory and Clinical Affairs. Ms. O'Quinn may testify concerning BPV's overall regulatory strategy for its filter lines, including the regulatory approach taken by BPV concerning the G2® Filter. Ms. O'Quinn may testify regarding communications between the FDA and Bard concerning Bard's filters. She may also testify concerning Bard's post-market activities concerning Bard's IVC filters, including investigations, and communications with FDA. She may also provide testimony that was the subject of her previous deposition testimony.

Abithal Raji-Kubba

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

Fact Witness

Subject Matter: Ms. Raji-Kubba was the Vice President of Research and Development for BPV. She was with the company from at least 2007 through 2011. She may testify regarding her involvement in and knowledge of the design modifications that were made to Bard's IVC filter line of products and the premarket testing that was conducted on the modified devices. She may also testify regarding her knowledge regarding why these design changes were needed and if and to what extent they made each IVC filter a safer device and could have been instituted sooner. She may also provide testimony that was the subject of her previous deposition testimony.

Kimberly Romney

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

Fact Witness

Subject Matter: Ms. Romney is currently the Senior Product Manager for C. R. Bard, Inc. She may provide testimony regarding BPV's marketing strategies, policies, and practices with regard to Bard's IVC filter line of products. Ms. Romney may also testify regarding communications by Bard to health care providers regarding its filters and changes or revisions to those communications over time. She may also provide testimony that was the subject of her previous deposition testimony.

Gin Schulz

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

Fact Witness

Subject Matter: Ms. Schulz is a former employee of C. R. Bard, Inc. While at C. R. Bard, Inc., Ms. Schulz was the Staff Vice President of Quality Assurance Operations. Prior to working in this capacity, she worked for BPV as a Vice President of Quality Assurance. Ms. Schulz may testify live at trial regarding any and all aspects of Bard's quality assurance processes that are in place or that have been in place for Bard's IVC filters. Ms. Schulz may testify regarding Bard's processes and procedures for adverse complaint handling, complaint investigation, and reporting of adverse events to the FDA regarding its filters. Ms. Schulz may also provide testimony that was the subject of her previous deposition testimony.

Based on reports received by Bard, she may also testify regarding the rates of complications with Bard's IVC filters and any analysis performed by Bard regarding adverse event rates. Ms. Schulz may also testify that the complication rates with Bard's commercially available filters (whether fracture, migration, perforation, or tilt) remain below the guidelines established by the Society of Interventional Radiologists and Bard's action limits. She may also testify that, upon receiving reports of adverse events, Bard was and has been proactive in investigating those reports and analyzing whether the risk of fracture for its products is in line with industry standards and guidelines, which it is and always has been. She may also provide testimony that was the subject of her previous deposition testimony.

Christopher Smith

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

1 **Fact Witness**

2 **Subject Matter:** Mr. Smith is a former employee of BPV. He may testify about matters
3 that were the subject of his employment with Bard and his deposition.

4 **William Stavropoulos, MD**

5 May be contacted c/o Samantha Conway, Christie & Young, P.C.
6 1880 John F. Kennedy Blvd, 10th Floor
Philadelphia, PA 19103

7 **Fact Witness**

8 **Subject matter:** Dr. Stavropoulos was the principal investigator for his facility on the
9 EVEREST study. He has written articles concerning IVC filters. Additionally, Dr.
10 Stavropoulos may testify regarding his clinical experience with IVC filters such as his
11 experience with and techniques for placing and retrieving IVC filters, as well as indications
12 for the use of IVC filters. He may also testify regarding the advantages of retrievable IVC
13 filters. He may discuss the benefits, risks, and potential complications of IVC filters, such
14 as migration, fracture, and perforation, and the imaging and other evaluation of those
15 events and their clinical significance, if any. He may also testify regarding the MAUDE
database and whether it can be used to determine the fracture rate of a medical device. He
may also discuss the dynamic nature of the IVC as well as the body's reaction to and
endothelialization of IVC filters. He may also testimony about matters that were the
subject of his deposition.

16 **Jack Sullivan**

17 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
18 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

19 **Fact Witness**

20 **Subject Matter:** Mr. Sullivan was a former Regional Sales Manager for BPV from 2005
21 to 2013. Prior to 2005, he held other sales positions with BPV. He may testify about BPV's
22 sales practices and procedures, and the sales person's role in interacting with a doctor and
the responsibility of sales people to report adverse events as well as about matters that
were the subject of his depositions..

23 **Melanie Vilece Sussman**

24 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
25 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

26 **Fact Witness**

27 **Subject Matter:** Ms. Sussman is a former employee of BPV. She may testify about
28 matters that were the subject of her employment with Bard and her deposition.

1 **Mehdi Syed**

2 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
3 201 17th Street NW, Suite 1700, Atlanta, GA 30363
4 404-322-6000

4 **Fact Witness**

5 **Subject Matter:** Mr. Syed is the current Vice President of Operations Finance at C. R.
6 Bard, Inc. Mr. Syed may testify about the net worth of BPV and C. R. Bard, Inc., as well
7 as the percentage of Bard's revenue attributable to BPV and filter products specifically.
8 Mr. Syed may also testify about the nature of Bard's shareholders and the process and
rationale behind dividend payments. He may also provide testimony that is the subject of
his deposition.

9 **Colleen Taylor MD**

10 5353 Reynolds St.
11 Savannah, GA 31405
12 912-819-5999

12 **Fact Witness**

13 **Subject Matter:** Dr. Taylor is a physician who treated Plaintiff. She may testify about
14 her care and treatment of Plaintiff and testimony that was the subject of her deposition
taken in this case.

15 **Alex Tessmer**

16 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
17 201 17th Street NW, Suite 1700, Atlanta, GA 30363
18 404-322-6000

18 **Fact Witness**

19 **Subject Matter:** Mr. Tessmer is a Product Manager at BPV. Mr. Tessmer was previously
20 employed by BPV as an engineer between 1997 and June 2005. In that position, Mr.
21 Tessmer contributed to filter product development occurring during the period 2002 to
22 June 2005. He may provide general testimony regarding mechanical engineering and
specific testimony regarding product design, technology development, and materials
testing. He may also provide testimony that was the subject of his previous deposition
testimony.

23 **Ronald A. Thisted, Ph.D.**

24 Office of the Provost
25 The University of Chicago
26 Levi Hall, Room 432
27 5801 South Ellis Avenue
Chicago, IL 60637
773-702-5539

28 **Expert Witness**

Subject Matter: Dr. Thisted is a Professor in the Department of Public Health Sciences, the Department of Statistics, the Department of Anesthesia & Critical Care, the Undergraduate College, and the Committee on Clinical Pharmacology and Pharmacogenomics at the University of Chicago. He is an expert in the fields of statistics, biostatistics, mathematics, and epidemiology. He may respond to assumptions, opinions, and testimony offered by various Plaintiff's experts as they relate to the same. Dr. Thisted is expected to offer opinions and testify consistent with his expert report served in the MDL, and his previous deposition testimony.

Donna-Bea Tillman, Ph.D., MPA, FRAPS

Biologics Consulting
400 N. Washington Street, Suite 100
Alexandria, Virginia 22314
703-739-5695

Expert Witness

Subject Matter: Dr. Tillman may provide expert testimony concerning FDA regulatory requirements, FDA regulatory compliance, the FDA clearance process, and post-clearance monitoring requirements. Dr. Tillman may further testify about the specific steps Bard followed to obtain FDA clearance of its IVC filters, and Bard's compliance with post-clearance monitoring requirements. To the extent that evidence related to the FDA Warning and 483 Letters is admitted, Dr. Tillman may testify regarding the same. Dr. Tillman is expected to offer opinions and testify consistent with her expert report(s) served in the MDL, and her previous deposition testimony.

Scott Trerotola, MD

May be contacted c/o Samantha Conway, Christie & Young, P.C.
1880 John F. Kennedy Blvd, 10th Floor
Philadelphia, PA 19103

Fact Witness

Subject Matter: Dr. Trerotola may testify regarding his clinical experience with IVC filters such as his experience with and techniques for placing and retrieving IVC filters, as well as indications for the use of IVC filters. He may also testify regarding the advantages of retrievable IVC filters. He may discuss the benefits, risks, and potential complications of IVC filters, such as migration, fracture, and perforation, and the imaging and other evaluation of those events and their clinical significance, if any. He may also discuss the dynamic nature of the IVC as well as the body's reaction to and endothelialization of IVC filters. He may also provide testimony that was the subject of his previous deposition testimony.

Doug Uelman

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

Fact Witness

Subject Matter: Mr. Uelmen was employed by Bard from 1996 to 2005 as Vice President for Quality Assurance. Prior to working in that capacity, Mr. Uelmen was BPV's Director of Quality Assurance. Mr. Uelmen may testify regarding any and all aspects of Bard's quality control processes that are in place or that have been in place for Bard's IVC filters. Mr. Uelmen may testify regarding Bard's processes and procedures for adverse complaint handling, complaint investigation, and reporting of adverse events to the FDA regarding its filters. He may also provide testimony that was the subject of his previous deposition testimony.

Carol Vierling

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

Fact Witness

Subject Matter: Ms. Vierling is a former employee of BPV who held the position of Director of Regulatory Affairs from 1992 through June 2002. Ms. Vierling may also testify regarding the 510(k) submission submitted by Bard to the FDA for the Recovery® Filter in 2002. In this regard, she may testify regarding her signing of the Truthfulness and Accuracy Statement included in that submission. She may also testify regarding the cover letter to the FDA that accompanied the 510(k) submission, why it identified Kay Fuller as the new FDA contact person for this device, how she signed that cover letter, and why she signed the cover letter in the manner that she did. She may also testify to her interactions with Kay Fuller and that Ms. Fuller never expressed any concerns to her regarding the Recovery® Filter 510(k) submission, the testing of that device, the safety or efficacy of that device, or the Asch clinical study regarding that device. She may also provide testimony that was the subject of her previous deposition testimony.

Bryan Vogel

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

Fact Witness

Subject Matter: Mr. Vogel is a Principal Clinical Assurance Specialist at BPV. He may testify regarding his role and Bard's processes, procedures, and practices for adverse complaint handling, complaint investigation, and reporting of adverse events to the FDA regarding its filters. He may also testify regarding the qualifications and training of BPV's Field Assurance personnel. He may also provide testimony that was the subject matter of his previous deposition testimony.

John Weiland

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363

1 404-322-6000

2 **Fact Witness**

3 **Subject Matter:** Mr. Weiland is a retired President and Chief Operating Officer of Bard.
4 He may testify regarding the matters that were the subject of his deposition.

5 **John Wheeler**

6 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
7 201 17th Street NW, Suite 1700, Atlanta, GA 30363
8 404-322-6000

9 **Fact Witness**

10 **Subject Matter:** Mr. Wheeler is a former Field Assurance Engineering Manager at BPV.
11 He may testify regarding Bard's processes, procedures, and practices for adverse
12 complaint handling, complaint investigation, and reporting of adverse events to the FDA
13 regarding its filters. He may also testify regarding the qualifications and training of BPV's
14 Field Assurance personnel. He may also testify regarding BPV's tracking and trending of
15 complaints regarding Bard IVC filters. He may also provide testimony that was the subject
16 matter of his previous deposition testimony.

17 **Steve Williamson**

18 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
19 201 17th Street NW, Suite 1700, Atlanta, GA 30363
20 404-322-6000

21 **Fact Witness**

22 **Subject Matter:** Mr. Williamson is the current President of BPV. Mr. Williamson may
23 testify concerning BPV's broad and overarching policies as a company and specifically
24 concerning Bard's IVC filters, including, but not limited to, the companies' business
25 practices, research and development, manufacturing, marketing and sales policies, and
26 regulatory strategies and policies. He may also provide testimony that was the subject of
27 his previous deposition testimony.

28 **Mark Wilson**

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000

Fact Witness

Subject matter: Mark Wilson was the Director of Sales, Training, and Development at
C.R. Bard, Inc. from 2004 to 2011. Mr. Wilson may provide testimony regarding Bard's
sales practices and procedures. He may also testify regarding training programs for Bard's
sales personnel. He may also provide testimony that was the subject of his previous
deposition.

Natalie Wong

1 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
 2 201 17th Street NW, Suite 1700, Atlanta, GA 30363
 3 404-322-6000

3 **Fact Witness**

4 **Subject Matter:** Ms. Wong is an employee of BPV. She began working for the company
 5 in 2002 and has been the Quality Engineering Manager in Field Assurance since 2007.
 6 Prior to working in this capacity, she worked for BPV as a Senior Quality Engineer. Ms.
 7 Wong may testify regarding any and all aspects of Bard's quality control and field
 8 assurance processes that are, or have been, in place for Bard's IVC filters. Ms. Wong may
 9 testify regarding Bard's processes and procedures for adverse complaint handling,
 10 complaint investigation, trending analysis, root cause analysis, data integrity audits, and
 11 design failure mode analysis relating to Bard's IVC filters.

12 Based on reports received by Bard, she may also testify regarding the rates of
 13 complications with Bard's IVC filters and analyses performed by Bard regarding adverse
 14 event rates. She may also provide testimony that was the subject of her previous deposition
 15 testimony.

14 **F. LIST OF EXHIBITS**

15 1. The parties have listed exhibits on their exhibit lists subject to pending
 16 motions in limine and other rulings by the Court. By listing exhibits, the parties do
 17 not contend that the exhibits are necessarily admissible and do not intend to waive
 18 any objection they have to the admissibility of the same.

19 2. The parties have met and conferred on the issue of exchanging and
 20 providing to the Courtroom Deputy Clerk with impeachment exhibits 48 hours in
 21 advance of the trial. The parties agree that they would like to provide those to the
 22 Courtroom Deputy Clerk only 24 hours in advance of the witness testifying, and
 23 pursuant to the Court's instructions that they be in a sealed envelope.

24 3. The following Exhibit Lists are attached hereto:

25 Exhibit A – Plaintiff's Exhibit List with Defense Objections; Exhibit B –

26 Defendants' Additional Exhibit List with Plaintiff's and Defendants' Objections.

27 a. Defendants' Contention: Many of the documents listed as potential
 28 exhibits were produced by Defendants subject to a Protective Order (Dkt.

1 268 and 269). Throughout this litigation the parties have been filing and
2 moving to seal certain documents pursuant to that Order. However, the
3 Protective Order does not cover the use of documents as exhibits at trial.
4 (See, Dkt 268, Para, 28). Defendants raise this issue to preserve it. Until the
5 exhibits are admitted, Defendants do not know which exhibits, if any, they
6 need to move to seal. Defendants request that the exhibits be maintained by
7 the Court reporter and not made available publicly throughout the trial and
8 until the Court rules on any motion to seal, and that the Court set a briefing
9 schedule for a post-trial briefing schedule on a motion to seal. Bard requests
10 the same procedure as was implemented by the Court in *Booker*, that the
11 motion be filed 21 days after the last transcript is placed on the docket.
12 See, Dkt. 10768

13 b. Plaintiff's Contention: Plaintiff disagrees with this request and
14 contends the exhibits are public record at the time admitted into evidence.
15 There is a strong presumption towards public access to judicial records.
16 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.2006);
17 A motion to seal transcripts and evidence adduced at trial must satisfy the
18 "compelling reasons" test, because a trial is a dispositive proceeding. *In re*
19 *Elec. Arts, Inc.*, 298 Fed. App'x 568, 569 (9th Cir. 2008). Judicial records
20 attached to dispositive motions must meet the "compelling reasons"
21 standard in order for those documents to be sealed. *Kamakana*, 447 F.3d at
22 1180.

23 4. The following exhibits are admissible in evidence and may be marked in
24 evidence by the Clerk:

25 The parties continue to meet and confer regarding exhibits and will attempt to
26 stipulate to the admission of exhibits in advance of trial.

27 5. As to the following exhibits, the parties have reached the following
28 stipulations:

1 a. Plaintiff's Exhibits:

2 The following records are stipulated to be authentic and satisfy the business
3 records exception, but the parties reserve all other available objections:

4 (i) Plaintiff's medical records and bills;

5 The parties have met and conferred and Plaintiff have agreed that
6 Plaintiff will not object to her medical records collected by Marker
7 Group on the basis of FRE 802 and require Defendants to prove the
8 exception under FRE 803(4). Plaintiff reserves her right to object to
9 such records on the basis of FRE 402, 403, hearsay within hearsay,
10 and any other evidentiary basis.

11 b. Defendants' Exhibits:

12 The following records are stipulated to be authentic and satisfy the business
13 records exception, but the parties reserve all other available objections:

14 The parties have met and conferred and Bard has reiterated its position that
15 it will not object to exhibits that are regularly kept business records on the
16 basis of FRE 802, and require Plaintiff to prove the exception under Rule
17 803(6). When Plaintiff provides Defendants with the exhibit list for each
18 witness at trial, Defendants will identify the exhibits to which this
19 agreement applies. However; Plaintiff has taken the position that
20 Defendants have agreed that all documents that were produced by
21 Defendants in this litigation are business records of Bard. While the vast
22 majority of the documents produced are Bard's business records,
23 Defendants also produced documents it obtained from third parties through
24 the course of discovery and other documents that are not Bard's regularly
25 kept business records.

26 6. As to the following exhibits, the party against whom the exhibit is to be
27 offered objects to the admission of the exhibit and offers the objection stated
28 below:

1 a. Plaintiff's Exhibits: *See* attached Exhibit A.

2 b. Defendants' Exhibits: *See* attached Exhibit B.

3 The parties shall submit their exhibit lists in writing, five days before trial, in a
4 format to be designated by the Court at the Final Pretrial Conference, in WordPerfect®
5 9.0 format either by email to Nancy_Outley@azd.uscourts.gov or on an IBM-compatible
6 computer disk.

7 7. Each party hereby acknowledges by signing this joint Proposed Final
8 Pretrial Order that any objections not specifically raised herein are waived.

9 **G. DEPOSITIONS TO BE OFFERED**

10 1. Pursuant to this Court's minute entry of April 20, 2018, the parties have
11 submitted their respective deposition designations to the Court on April 23, and April 30,
12 2018. Additional designations for witnesses potentially affected by the Court's ruling
13 related to cephalad migration deaths will be submitted in conformity with any Order
14 issued by the Court at the Final Pretrial Conference on May 4, 2018. After all
15 designations are submitted to the Court, the parties will file their lists of their designations
16 for the record.

17 2. The parties have included deposition designations subject to pending
18 motions in limine and other rulings by the Court. By making those designations the
19 parties do not contend that the testimony is necessarily admissible and do not intend to
20 waive any objection they have to the admissibility of the same.

21 3. In addition to the depositions submitted to the Court, the parties reserve the
22 right to play the video of any deposition for which the parties exchanged designations and
23 that were ruled on in the *Booker* case or for which there are no objections.

24 4. The parties agree to exchange for review and final cuts, the videos and
25 transcripts of any video deposition to be played at trial at least 48 hours before it is played,
26 and to have the video and transcript finalized at least 24 hours before it is played.

27 5. Issues of Dispute with Respect to Deposition Designations.

28 a. Dr. Rogers, Dr. Brauer, and Dr. Moritz.

Defendant's position: Plaintiff has indicated that she intends to play the video depositions of Dr. Rogers, Christine Brauer, PhD, and Dr. Moritz. Those witnesses are retained experts who Bard does not intend to call at trial. Bard has asserted objections to the designations that indicate that the witness was retained by Bard in violation of the Court's prior ruling and under FRE 403. Bard objects to the playing of those depositions as they are cumulative and the testimony can be obtained from other witnesses. Bard requests that Plaintiff be required to make the showing established by the Court in the *Booker* trial before any of those depositions are played. See. Dkt 10382

Plaintiff's position: This Court has previously ruled that Plaintiff in the *Booker* case may utilize the testimony of these witnesses; Plaintiff intends to do so in the same manner as in the *Booker* case.

b. Dr. Stein

Defendants' position: Plaintiff has also indicated that she intends to play the video deposition of Dr. Stein, an expert retained by Bard, and who Bard intends to call live at trial. As a result, Plaintiff will have the opportunity to examine Dr. Stein and the playing of his deposition is cumulative.

Plaintiff's position: Plaintiff has not retained Dr. Stein and cannot compel Dr. Stein to appear in Plaintiff's case in chief. As such, Dr. Stein is unavailable and Plaintiff intends to play designated deposition testimony.

H. MOTIONS IN LIMINE (JURY TRIAL)

All motions in limine have been filed, and fully briefed. Those that have not yet been ruled on are set forth in Section I, below.

I. LIST OF PENDING MOTIONS

1. The parties have filed and fully briefed motions in limine.

J. PROCEDURES FOR EXPEDITING TRIAL

The parties agree to the following procedures that might expedite trial to the extent

possible:

1. At least 24 hours before the video is to be played, meet and confer on a stipulated summary of work history and professional background and qualifications of witnesses called via deposition rather than using deposition excerpts. ;

2. Using summary exhibits in place of voluminous documentary evidence. The parties agree to meet and confer and establish a time for a summary exhibit is going to be used to provide the proposed summary exhibit to opposing counsel;

3. stipulations on authenticity and foundation; and

4. using the courtroom technology to expedite the presentation of evidence.

K. ESTIMATED LENGTH OF TRIAL

28 hours for Plaintiff.

27 hours for Bard,

Bard objects to any additional time being added to the trial after the entry of this Pretrial Order. In the Booker case, Bard made strategic decisions based on the time allocated by the Court from the very outset of trial. Those strategic decisions included, but were not limited to, determining the amount of time to spend on the cross-examination of several of the plaintiff's principal experts. As just one example of the Defendants' efforts to budget their time, they spent only 30 minutes cross-examining the Plaintiff's expert Dr. Robert McMeeking, even though he was the only witness presented by the Plaintiff that directly supported her claim that the filter at issue was defectively designed. The Defendants believe that the Court's decision to afford the plaintiff additional time in Booker, while certainly within the Court's discretion, unfairly penalized the Defendants for abiding by the limitations set by the Court and caused prejudice (particularly given how the Plaintiff squandered the time originally provided with repetitive questioning and the frequent focus on collateral issues). See, e.g., *Amarel v. Connell*, 102 F.3d 1494, 1514 (9th Cir. 1996), *as amended* (Jan. 15, 1997); see also *Gen. Signal Corp. v. MCI Telecommunications Corp.*, 66 F.3d 1500, 1509 (9th Cir. 1995) (noting

1 unfairness to defendant in providing plaintiff additional time after defendant had
2 already made strategic decisions based on the court's original allocation).

3 Plaintiffs' response: Bard's argument is based on a false premise. Bard was not
4 prejudiced in the *Booker* trial by the plaintiff's use of time; Bard rested with
5 significant time left on its clock. It is simply not the case that Bard was required to
6 use time in response to the plaintiff's need for additional time in that trial. Second,
7 Bard's witnesses as well as Bard's unwillingness to stipulate to the admission of its
8 business records were a significant factor in the amount of time the plaintiff was
9 required to use in the *Booker* trial. Absent those issues, Plaintiff's counsel believes
10 that Ms. Booker's trial team would not have required additional time. Further,
11 Bard's claim that Plaintiff's use of time impacted its strategy is simply not true.
12 Bard points to its decision to cross examine Dr. McMeeking for only 30 minutes.
13 But Dr. McMeeking testified on the third day of trial; Plaintiff did not ask the
14 Court for additional time until the next week of trial. Nothing precluded Bard from
15 using equal time on cross examination or from asking for additional time during
16 trial commensurate to the plaintiff.

17 Regardless, Bard's "motion" here is premature. Plaintiff endeavors to complete her
18 case within the time allotted. Plaintiff also believes that Bard's stipulation at the
19 April 13, 2018, pretrial conference that its documents are business records in
20 combination with the parties' meet and confer regarding exhibits will resolve some
21 of the time issues that plagued the *Booker* trial. The issue of whether or not
22 additional time may or should be awarded is something this Court should not pre-
23 judge or decide in a vacuum. A decision without regard to how trial would
24 implicate Plaintiff's right to due process.

25 **L. JURY DEMAND**

26 A jury trial has been requested.

27 1. The parties stipulate that the request was timely and properly made;
28

1 **M. JOINT PROPOSED JURY INSTRUCTIONS, JOINT PROPOSED VOIR**
2 **DIRE QUESTIONS, AND PROPOSED FORMS OF VERDICT FOR JURY**
3 **TRIALS**

4 The joint Proposed Jury Instructions, joint Proposed Voir Dire Questions, and
5 Proposed Forms of Verdict shall be filed in accordance with the instructions contained in
6 the Order Setting Final Pretrial Conference.

7 **N. CERTIFICATIONS**

8 The undersigned counsel for each of the parties in this action does hereby certify
9 and acknowledge the following:

- 10 1. All discovery has been completed.
- 11 2. The identity of each witness has been disclosed to opposing counsel.
- 12 3. Each exhibit listed herein: (1) is in existence; (2) is numbered; and
13 (3) will be disclosed and shown to opposing counsel at a later date
14 mutually agreeable to the parties. The parties agree demonstrative
15 exhibits will be exchanged or made available for inspection at a later
16 date agreed to by the parties.
- 17 4. The parties agree and stipulate that the statement of the case used in
18 the juror questionnaire approved by the Court is to be used as the
19 parties' joint statement of the case.
- 20 5. The parties have complied in all respects with the mandates of the
21 Court's Rule 16 Scheduling Order and Order Setting Final Pretrial
22 Conference.
- 23 6. The parties have made all of the disclosures required by the Federal
24 Rules of Civil Procedure (unless otherwise previously ordered to the
25 contrary).
- 26 7. The parties acknowledge that once this Proposed Final Pretrial Order
27 has been signed and lodged by the parties, no amendments to this
28 Order can be made without leave of Court.

O. INFORMATION FOR COURT REPORTER

In order to facilitate the creation of an accurate record, the Parties will file a “Notice to Court Reporter” one week before trial containing the following information that may be used at trial:

1. Proper names, including those of witnesses.
2. Acronyms.
3. Geographic locations.
4. Technical (including medical) terms, names or jargon.
5. Case names and citations.
6. Pronunciation of unusual or difficult words or names. The parties will also send to the court reporter a copy of the concordance from key depositions.

Respectfully submitted this 1st day of May 2018.

GALLAGHER & KENNEDY, P.A.

SNELL & WILMER L.L.P.

By: s/Mark S. O’Connor

By: s/Kate Helm (w/permission on behalf of)

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Peripheral Vascular, Inc.*

1 Based on the foregoing,

2 **IT IS ORDERED** that this Proposed Final Pretrial Order jointly submitted by the
3 parties is hereby **APPROVED** and **ADOPTED** as the official Pretrial Order of this Court.

4 DATED this ____ day of _____, 2018.

5
6 _____
7 David G. Campbell
8 United States District Judge
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